

3A
Document # 4754
APPROVED 5/15/86
BOARD MEETING

BUILDING - 33 LEASE

THIS GROUND LEASE is entered into by and between the Boston Redevelopment Authority, a public body politic and corporate organized under the laws of the Commonwealth of Massachusetts ("Landlord"), and Navy Yard Plaza Development Associates-33 Partnership, a Massachusetts General Partnership ("Tenant").

ARTICLE 1

PREMISES

1.1 Landlord, for and in consideration of the rents hereinafter reserved by Landlord and the covenants and agreements hereinafter contained on the part of the Tenant to be paid, kept and performed, does hereby lease to Tenant, and Tenant does hereby lease, take and hire upon and subject to the terms and conditions herein set forth, the Leased Premises.

1.2 The term "Leased Premises" shall mean the land and building commonly known as Building 33, situated in the Charlestown Navy Yard, Charlestown, Boston, Suffolk County, Massachusetts as more particularly described on Exhibit "A" attached hereto and as shown on the plan entitled "Lease

Plan of Land" prepared by R. E. Cameron & Associates, Inc. of Norwood, Scale 1" = 20' dated March 27, 1985 and revised April 11, 1985 and November 26, 1985 together with any and all rights of access, easements or other rights now appurtenant or as may be necessary for said Leased Premises to be used as set forth herein, but specifically excluding all right and interest, if any, of Landlord in and to the fee in the land lying in the public streets and private ways abutting the Leased Premises subject, however, to the exceptions to fee title described as the Permitted Exceptions set forth in Exhibit "B" attached hereto.

1.3 The term "Improvements" shall mean all improvements, structures, buildings, interiors, landscaping, paving, pipes and conduits, roads, walkways, fixtures and, to the extent of Tenant's interest therein, fencing and utility lines, existing on the Leased Premises at the Lease Commencement Date, and all alterations and additions thereto and replacements thereof, and any other buildings, structures or improvements hereafter erected on the Leased Premises.

1.4 The term "Building Service Equipment" shall mean all apparatus, machinery, devices, fixtures, appurtenances, equipment and personal property necessary for the proper maintenance, protection, conservation and operation of the Improvements other than moveable trade fixtures, machinery and equipment and in particular shall include, without limiting the generality of the foregoing, the following, if any: awnings, shades, screens and blinds; asphalt, vinyl

composition and other floor, wall and ceiling coverings; partitions, doors and hardware; elevators, escalators and hoists; heating, plumbing and ventilating apparatus; gas, electric and steam fixtures; chutes, ducts and tanks; oil burners, furnaces, heaters, incinerators and boilers; air cooling and air conditioning equipment; washroom, toilet and lavatory fixtures and equipment; engines, pumps, dynamos, motors, generators, electrical wiring and equipment; tools, building supplies, lobby decorations and window washing hoists and equipment, if any; garage equipment and gardening and landscaping equipment; and all additions thereto and replacements thereof, but excluding from Building Service Equipment any property which is owned by Occupancy Tenants and used by them in connection with the operation of their respective spaces and not in connection with the operation of the Improvements as a whole.

1.5 The term "Property" shall mean the Leased Premises, the Improvements and the Building Service Equipment.

ARTICLE 2

TERM

2.1 The term of this Lease is for eighty (80) years commencing _____ (the "Lease Commencement Date"), and ending at midnight on _____ (the

"Lease Expiration Date"), unless sooner termination as provided for in this Lease.

ARTICLE 3

RENT

3.1 Commencing on the Lease Commencement Date, Tenant covenants and agrees to pay to Landlord without demand, abatement deduction or offset, as rent, in lawful money of the United States, annual rental as follows:

A. Construction Period Rent. Tenant shall pay during the construction period rent at the rate of one-half ($\frac{1}{2}$) of the Base Rent or 35¢ per gross square foot per annum payable monthly in advance, commencing on the Lease Commencement Date and shall be prorated if the Lease Commencement date is other than the first day of the month. If the Commencement Date shall be other than the first day of the month, the same proration shall apply to the last month of the Term of this Lease.

B. Base Rent. Tenant shall pay for each Lease Year or partial Lease Year during the term hereof Base Rent at the annual rate of Thirty-Five Thousand Six Hundred Twenty-Four and 40/100 (\$35,624.40) Dollars, which sum shall be paid in monthly installments of Two Thousand Nine Hundred Sixty-Eight and 70/100 (\$2,968.70) Dollars, payable in advance on the first day of each month, except that the first such payment shall be paid on the date of issuance of

a Certificate of Occupancy or Certificate of Completion which ever occurs first and shall be prorated if the said date is other than the first day of the month.

C. Additional Rent. Tenant shall also pay as additional rent:

(1) Annually for each Lease Year or partial Lease Year during the term hereof a sum equal to fifteen percent (15%) of the amount of the Net Cash Flow for each such Lease Year ("Percentage Rent"), payable monthly in advance based on a budget prepared annually and submitted to Landlord not less than sixty (60) days prior to the beginning of each Lease year; and

(2) As and when the same are received by or made available to or for the benefit of Tenant, fifteen percent (15%) of all Net Refinancing Proceeds.

D. For purposes of this Lease the following terms shall have the following meanings:

(1) The term "Net Cash Flow" shall mean the amount by which Gross Revenue during any given Lease Year exceeds Allowed Deductions during such Lease Year.

(2) The term "Gross Revenue" shall mean:

(a) All revenues and the fair market value of all services, goods or the like of every type and from every source whatsoever (including without limitation Occupancy Tenants) received by the Tenant, or received for the benefit of Tenant, with respect to the use, occupancy or other utilization of space in, or other facilities of,

the Property under any use, occupancy or other agreements, written or oral and however denominated (other than security and other deposits returnable upon expiration of any occupancy lease, except that any such security and other deposits which become the property of the Tenant shall be treated as part of Gross Revenue at such time as they become the property of Tenant);

(b) Payments from the Tenant at market rentals for any space which it or any person associated with it occupies or uses in the Property, the Tenant hereby agreeing to make such payments on an annual basis. The market rentals therefor shall be based upon rentals for reasonable comparable space in the Property and as if such space were leased for a term of five (5) years, such market rental rate to be re-calculated at five (5) year intervals;

(c) All interest earned on a reserve account taken as an Allowed Deduction under Section 3.1 D(3)(a), except to the extent such interest is retained in and as a part of such reserve account, subject to the limitations set out in said Article 3, Section 3.1 (D)(3)(a).

Gross Revenue shall be computed in accordance with generally accepted accounting principles consistently applied.

(3) The term "Allowed Deductions" shall mean the following amounts actually paid with respect to the Lease Year in question:

(a) All Impositions (as hereinafter defined in Article 4, Section 4.1) and all reasonable and customary charges incurred for the maintenance, protection, conservation and operation of the Property in the manner required or permitted by this Lease and consistent with the operation and management from time to time of like rehabilitated properties in the City of Boston as and to the extent the same are considered ordinary in the business and necessary for its operation, including without limitation; payments made by Tenant for insurance premiums, legal expenses, management expenses, telephone and utilities, fuel, repairs and maintenance, accounting, statistical or bookkeeping services or equipment, salaries, advertising and promotion, commissions and other compensation for leasing, alterations and repairs incidental to the marketing and leasing of the Property to potential Occupancy Tenants and to make space ready for Occupancy Tenants, other charges for operation and

management of the Property and the Partnership; and amounts paid to a reserve account, actually maintained by Tenant and held by the Depository, for replacements and capital improvements, provided that, with respect to any such reserve account:

i) the amount deposited therein in any lease Year shall not exceed two percent (2%) of Gross Revenues for such Lease Year; and

ii) withdrawals made therefrom shall only be for the purpose of paying for the acquisition and installation of physical assets which replace, or appreciably lengthen the life of an existing asset or add to the asset base of the Property.

(b) Payments made by Tenant to Landlord of Base Rent;

(c) Payments made by Tenant for fees pursuant to Article 30, Section 30.2;

(d) An amount which shall initially be computed by multiplying Total Project Costs (as defined in Section 31.10, below) by thirteen and one-half percent (13.5%).

(e) If Tenant is required, in connection with the restoration of damage or destruction caused by casualty or as a consequence of a taking by eminent domain, to deposit any amount or amounts with the Depository under the Provisions of Section 13.1(c), a deduction shall be allowed and calculated in order to amortize each amount so deposited over the shorter of (i) the useful life of the restoration or repair, or (ii) the then balance of the term of this Lease, (except with respect to amounts so deposited because Tenant has failed to maintain casualty insurance on the Improvements in accordance with the Provisions of this Lease).

(f) If Tenant commences restoration of damage caused by casualty or as a consequence of a taking by eminent domain prior to collection of the "Amounts" (as defined in Section 13.1) receivable with respect to such casualty or taking, a deduction shall be allowed for all interest incurred by Tenant, prior to the receipt of the amounts, for the interim financing of such restoration.

Except as otherwise herein provided, Allowed Deductions shall be computed on a cash basis in accordance with generally accepted accounting principles consistently applied.

(4) The term "Financing" means the original principal amount of funds provided by an Institution (as defined in Section 31.6) either (i) entirely as debt secured by a Leasehold Mortgage on the Property, or (ii) partly as debt so secured and partly as an equity investment in the Property. The term "Refinancing" means replacing all or a portion of the then existing Financing with new Financing, except that Refinancing shall not include the replacement of the initial construction financing for the Improvements by the initial permanent financing except to the extent that said permanent financing exceeds total project costs. The term "Net Refinancing Proceeds" means the amount by which the proceeds of Refinancing (reduced by the reasonable expenses incurred by Tenant in connection with the Refinancing) exceed the greater of Total Project Costs or the then outstanding principal balance of the existing Financing.

E. In order that Landlord may receive the Percentage Rent required hereunder in equal monthly installments during each Lease Year, Tenant agrees to submit to Landlord not less than sixty (60) days prior to the beginning of each Lease Year a budget (the "Percentage Rent Budget") which shall set forth a detailed projection (using the foregoing

definitions and setting their computations out in separate calculations) of Percentage Rent for the ensuing Lease Year. Except as provided below, notwithstanding a dispute by the Landlord of the reasonableness of the Percentage Rent Budget, Tenant shall pay to Landlord, as Percentage Rent, commencing on the first day of the first month of such ensuing Lease Year and thereafter continue to pay to Landlord on the first day of each month of such Lease Year, an amount equal to one-twelfth (1/12th) of the Percentage Rent projected in such budget, or one-twelfth (1/12th) of the actual Percentage Rent paid to Landlord for the Preceding Lease Years, whichever is greater, but only if the greater amount does not exceed the lesser amount by more than 20 percent (20%); otherwise, payments shall be based on the lesser figure plus twenty percent (20%) thereof.

Landlord may at any time within sixty (60) days after the receipt of the Percentage Rent Budget make such investigations and inquiries as Landlord determines to be appropriate in order to evaluate the reasonableness thereof (including without limitation, an audit and/or examination of the books and records of Tenant with respect to all financial matters relevant to the operation of the Property). If, within said sixty (60) day period Landlord should determine in the exercise of its reasonable judgment that the Percentage Rent Budget understates the amount of Percentage Rent reasonably to be anticipated for the ensuing Lease Year, then Landlord may make a revised estimate of the

Percentage Rent anticipated for such Lease Year ("Adjusted Percentage Rent") and, based thereon, Tenant shall increase its monthly payments of Percentage Rent for the remainder of such Lease Year so as more accurately to reflect Percentage Rent as estimated by Landlord to be due for such ensuing Lease Year. After paying three (3) consecutive months of Adjusted Percentage Rent, if Tenant can provide a CPA's financial statement which supports Tenant's Percentage Rent Budgets and evidences an overpayment of Percentage Rent by Tenant then Tenant shall be credited in the next following month with such amounts as Tenant has overpaid and Tenant shall pay in the subsequent months the amount indicated by Tenant's CPA.

F. Within ninety (90) days after the end of each Lease Year, Tenant shall furnish to Landlord a detailed, true, correct and complete statement (the "Year End Financial Statement") of all income, expenses, and other financial matters reasonably necessary to determine, and setting forth a calculation of, the amount of Net Cash Flow of the Property and of the Percentage Rent due Landlord for the immediately preceding Lease Year, prepared in conformity with the requirements of this Lease by an independent certified public accounting firm selected by Tenant and approved by Landlord. Without limitation, the Year End Financial Statement shall provide (a) a complete statement of revenues and expenses on a cash basis; (b) a statement showing changes in the balance of all reserve accounts and

financings secured in whole or in part by the Property; and (c) a reconciliation with financial statements for which an opinion has been rendered, audited under generally accepted auditing standards. If the Year End Financial Statement shows a deficiency in the payment of Percentage Rent for the preceding Lease Year, Tenant shall promptly pay such deficiency and if the Year End Financial Statement shows an overpayment of Percentage Rent, the amount of such overpayment shall be credited against payment of Base Rent, Percentage Rent and additional rent next falling due hereunder, but reserving in the Landlord the right, in all events, first to offset against such overpayment any sums owing but unpaid by Tenant to Landlord under this Lease.

G. At the time Tenant delivers to Landlord the Year End Financial Statement, Tenant shall also deliver a statement setting forth the name of each current Occupancy Tenant, the term of the leases under which Occupancy Tenants hold possession, the rental being paid under said leases, the square footage and location of the areas subject to said leases, and such additional information as Landlord may require after written notice to Tenant of the same.

H. Landlord reserves the right to conduct an independent audit of Tenant's records regarding all fiscal matters relevant to the Property to ascertain the accuracy of any Year End Financial Statement submitted by Tenant. This independent audit may be conducted at any time within two (2) years of the end of any Lease Year and may be

conducted by an accounting firm of Landlord's choice. Such independent audit shall be conducted by a nationally recognized accounting firm (or by an independent certified public accountant selected by Landlord and approved by Tenant, which approval shall not be unreasonably withheld) and if the amount of Net Cash Flow as shown on such independent audit shall exceed by more than five percent (5%) that shown in any such Year End Financial Statement submitted by Tenant, the Tenant shall pay the total cost thereof; otherwise, the cost of such audit shall be borne by Landlord.

I. On or before the 15th day of each April, July, October and January during the term of this Lease, Tenant shall deliver to Landlord, if Landlord so requests by written notice to Tenant, a statement itemizing the Gross Revenue and the Allowed Deductions during the quarter-annual period just ended (i.e., the quarter-annual periods ending, respectively, March 31, June 30, September 30 and December 31) together with a statement as to any (i) Occupancy Tenants terminated and/or cancelled, (ii) new Occupancy Tenants created, and (iii) such other information as may be relevant to computation of amounts due Landlord hereunder.

3.2 It is the intention of the parties hereto that the rent provided for in this Article shall be absolutely net to Landlord throughout the term of this Lease. Except for any debt service charges incurred in connection with financing obtained by Landlord on its reversion hereunder or interest

herein and except as otherwise expressly provided in this Lease, in order that such rent shall be absolutely net to Landlord, Tenant shall pay and save Landlord harmless from and against all Impositions, insurance premiums, carrying charges, costs, expenses and obligations of every kind and nature whatsoever relating to the ownership, leasing or operation of the Property which may arise, accrue or become due during the term of this Lease.

ARTICLE 4

PAYMENT OF TAXES AND OTHER CHARGES; LINKAGE

4.1 Commencing on the Lease Commencement Date and continuing for the entire term of this Lease, as part of the consideration of this Lease and as additional rent hereunder, Tenant agrees to pay and discharge or cause to be paid and discharged promptly as the same become due and payable, all taxes, assessments, charges, license fees, municipal liens, levies, excise taxes or imposts, whether general or special, ordinary or extraordinary, imposed by any governmental authority as a result of or with respect to the ownership or use of the Leased Premises or the Improvements or the Building Service Equipment located thereon which may be levied, assessed, charged or imposed, or may be or become a lien or charge upon the Property, or any part thereof or upon the leasehold estate hereby created, or upon the Landlord solely by reason of its

ownership of the Leased Premises. If at any time during the term of this Lease the methods of taxation or assessment or rate determination applicable to real and personal property prevailing at the Lease Commencement Date shall be altered so that in lieu of any Imposition described in this paragraph there shall be levied, assessed or imposed an alternate tax, however designated, such alternate tax shall be deemed an Imposition for the purposes of this Lease (including this Article) and Tenant shall pay and discharge such Imposition as provided by this Article. Nothing contained in this Lease shall be construed as imposing upon Tenant any obligation to pay any income, estate, inheritance, succession, capital levy or transfer tax imposed on the Landlord and growing out of or levied in connection with the Landlord's right in the Leased Premises.

4.2 Any Impositions required to be paid by Tenant which shall relate to the Lease Year during which the term of this Lease shall commence or terminate shall be prorated between Landlord and Tenant as of the date of such commencement or termination. Tenant shall pay all assessments and charges of every type whether general, special, ordinary or extraordinary, which are assessed or levied against or with respect to the Property during the term of this Lease. If the law expressly permits the payment of such assessments or levies in installments, Tenant may utilize the permitted installment method, but shall pay each installment thereon before delinquency. If

Tenant shall have permitted or elected to have such assessments or levies made payable in installments over a period of time which extends beyond the date this Lease expires or otherwise terminates, the entire unpaid balance of such assessments or levies against the Property during the term hereof and applicable to the period of the leasehold estate created hereby shall be paid by Tenant prior to or upon the expiration of the term hereof or upon any earilier termination of this Lease by depositing such unpaid balance in cash with Landlord, except to the extent that any Occupancy Tenants are required to pay such amounts pursuant to the terms of subleases allowed hereby.

4.3 Tenant shall within ten (10) days of payment and in any event on Landlord's request, deliver to Landlord copies or duplicate receipts (or, if the same are not available, other materials acceptable to Landlord) showing timely payment of all Impositions paid by Tenant as required by this Lease.

4.4 Tenant shall make all payments of all Impositions directly to the charging authority before delinquency and before any fine, interest or penalty shall become due or be imposed by operation of law for their nonpayment.

4.5 In the event that the Leased Premises are not separately taxed or assessed, then, in that event, the Imposition as levied shall be apportioned between the Leased Premises and such other areas with which it is assessed in such manner that Tenant shall pay only an equitable portion

of any such Imposition. Landlord shall indemnify and hold Tenant harmless from all loss, cost and expense which it may suffer or incur because of the failure on the part of Landlord to pay the Impositions on the Property of which the Leased Premises are a part, provided that Tenant shall not be in default of its obligations to pay its equitable portion of such Impositions.

4.6 Subject to the provisions hereof, Tenant shall have the right to contest or review by appropriate legal or administrative proceedings, any Imposition or other charge or levy which the Tenant is required to pay pursuant to the provisions of this Article.

Whenever the Tenant desires to contest the amount or validity of any Imposition, it shall first give written notice to the Landlord of its intention to do so, and, at the option of the Landlord, the Tenant shall, from time to time during the pendency of such proceedings, deposit with the Depository (as hereinafter defined), as security for the payment of such Imposition, money or other security reasonably satisfactory to the Landlord, an amount sufficient, in the reasonable judgment of the Landlord, to pay said Imposition, together with all interest and penalties in connection therewith, and all charges that may be assessed against or become a charge on the Property or any part thereof, in said proceedings. Any moneys so deposited by Tenant and the reasonable cost of providing such security shall be an "Allowed Deduction" at the time

paid or incurred for purposes of the calculation of "Net Cash Flow" under Article 3, Section 3.1C, provided that, when the need for such security terminates, the balance of any moneys so deposited and not applied in payment of an Imposition shall be treated as Gross Revenue under Section 3.1C(2). If the Tenant shall not have theretofor paid, removed and discharged the Imposition and the interest and penalties in connection therewith, and the charges accruing in such proceedings, then, upon the termination of such proceedings, the money or other security so deposited (together with any interest on any security deposited hereunder) shall at the direction of the Landlord be applied to the payment, removal and discharge of said Imposition, if any, then payable and the interest and penalties in connection therewith, and the charges accruing in such proceedings, and the balance, if any, shall be paid or returned to the Tenant, but reserving in the Landlord the right, to direct that the money or other security so deposited (together with any interest on any security deposited hereunder) be paid to it in order to offset against such balance any sums owing but unpaid by Tenant to Landlord under this Lease.

In the event that the money or other security so deposited shall be insufficient for this purpose, the Tenant shall forthwith pay over to the Depository an amount of money sufficient (in Landlord's reasonable opinion),

together with the money or other security so deposited pursuant to this Section 4.6, to pay the same.

Nothing in this Article, except as hereinabove provided, shall be construed as relieving, modifying or extending the Tenant's covenant to pay any such Imposition and all other charges incident thereto at the time and in the manner provided in this Article.

4.7 The Landlord shall join in any such proceeding where such joinder shall be necessary in order properly to prosecute such proceeding and the Landlord shall have first been fully indemnified against all liability in connection therewith. The Landlord shall not be subject to any liability for the payment of any costs or expenses in connection with any proceeding brought by the Tenant, and the Tenant covenants to indemnify and save harmless the Landlord from any such costs or expenses, including reasonable legal fees.

4.8 The certificate, advice or bill of the appropriate official designated by law to make or issue the same or to receive payment of any such Imposition of the non-payment of any such Imposition, shall be prima facie evidence that such Imposition is due and unpaid at the time of the making or issuance of such certificate, advice or bill.

4.9 The Tenant shall also pay or cause to be paid all taxes or excises on rent and income received by the Tenant from Occupancy Tenants, all permit, inspection and license fees, franchise or transfer taxes and all other public

charges, however described, made or imposed by the City of Boston, the federal government or other public authority by reason of or in respect of the Tenant's interest in this Lease transaction or any document to which the Landlord and the Tenant (or the Tenant alone) is a party, creating or transferring an interest or estate in the Property or any part thereof; or by reason or in respect of the business of the Tenant or the occupancy, use or possession of the Property, or any part thereof, or of any sidewalk, street or alley, or part thereof, adjoining the same, including any permit and inspection fees, or taxes or other public charges made or imposed upon the Landlord as owner of the Leased Premises by reason of the Tenant being engaged in the business of renting or leasing the Leased Premises.

4.10 It is the express intent of the Parties that the Property be fully taxable to the Tenant as if the Tenant were the fee owner thereof, notwithstanding any law or regulation to the contrary, and the Tenant hereby agrees to make no claim or take any action the purpose of which would be to claim that the Property is exempt, directly or indirectly from taxation. If the Property shall for any reason be treated as so exempt, the Tenant shall pay, in semi-annual payments on January 1 and July 1 of each Lease Year, a sum which would equal the amount of taxes that would be reasonably levied against the Property but for its tax exempt status, as if the Tenant were the fee owner thereof, and all such payments shall be Impositions for all purposes

of this Lease, including this Article 4, and the calculation of Net Cash Flow under Article 3, Section 3.1C. Such sums shall be payable as additional rent and shall be determined by the Landlord using as the basis therefor the amount of taxes assessed against reasonably comparable properties in the City of Boston. For purposes of this Section 4.10, it is hereby agreed that commencing on the Lease Commencement Date and continuing until the July 1 date subsequent to the first tax assessment date subsequent to the Lease Commencement Date, Tenant shall pay \$1,300.57 per month (prorated for any portion of a month) to Landlord.

If at any time during the term of this Lease, the Property were to be taxed directly to Tenant or Landlord by the City of Boston, Tenant shall retain all rights to appeal such assessment including but not limited to the right to seek a tax abatement.

4.11 Tenant shall pay a security fee equal to \$.05 per gross square foot of the improvements to the property per annum for the support of security services in the Navy Yard commencing July 1, 1986 and will continue until such time as the Landlord determines that such security services are no longer necessary. Said fee shall be subject to an escalation formula for the remainder of the lease term.

4.12 Tenant shall pay a maintenance fee equal to \$.05 per gross square foot of the improvements to the property per annum commencing one month after receipt of a

certificate of occupancy and thereafter is subject to an escalation formula for the remainder of the lease.

The redevelopment of this property is part of the first phase of the total project consisting of approximately 200,000 square feet, as contemplated in the Management Agreement, attached hereto as Exhibit C and hereby incorporated by reference. This property shall contribute proportionally to the overall project's linkage obligations. Accordingly, the Tenant shall comply with Article 26 of the Boston Zoning Code. The linkage obligation will be triggered by the initiation of the second phase of this project.

ARTICLE 5

POSSESSION, USE, COMPLIANCE WITH LAWS, MAINTENANCE AND REPAIRS

5.1 Possession of the Leased Premises shall be delivered by Landlord to Tenant upon the Lease Commencement Date free and clear of all tenants and occupants and also free of all liens and encumbrances, all except for those matters disclosed in the Permitted Exceptions set forth in Exhibit "B" and such other liens, rights or encumbrances as the Tenant may have approved in writing. The Leased

Premises are to be delivered in their present condition, "as is", it being agreed that the Tenant has had an opportunity to examine the same in all respects (including subsurface conditions and utilities), that the Landlord has made no representations or warranties of any kind with respect to such condition and that the Landlord shall have no obligation to do any work on or with respect to the Leased Premises, or the condition thereof.

5.2 The Leased Premises and the Improvements shall continuously and without interruption, subject to vacancies arising in the ordinary course of the operation of the Property, be used and devoted solely to a mixture of office, retail and commercial space all in accordance with legal requirements from time to time applicable thereto and for no other purpose or purposes without first obtaining the consent of Landlord, which consent Landlord shall not unreasonably withhold. Notwithstanding the foregoing, space at the ground floor level shall be devoted to commercial uses consisting only of active retail sales of products or provision of services to the general public.

5.3 The Tenant agrees throughout the term of this Lease, at the Tenant's sole cost and expense, properly to maintain, or cause to be maintained, the Property and each and every part thereof in good order and condition in all respects, subject to reasonable wear and tear (but not

obsolescence), free of accumulation of dirt, rubbish, snow and ice, and to make all necessary repairs, interior and exterior, structural and non-structural, ordinary as well as extraordinary, foreseen as well as unforeseen, in order to maintain the Property as required hereby. When used in this Article, the term "repair" shall include replacements or renewals when necessary, and all such repairs made by the Tenant shall be at least equal in quality and class to the original work. The provisions and conditions of Section 13.2 and 13.4 of Article 13 hereof applicable to changes or alterations shall mutatis mutandis, apply to maintenance and repairs required under this Section.

5.4 The Tenant agrees throughout the term of this Lease, at the Tenant's sole cost and expense, promptly to comply with, and cause the Property to be maintained in conformity with, and not in violation of, all laws and ordinances (including without limitation, the provisions of the Plan) and the orders, rules, regulations and requirements of the federal, state and city governments and appropriate departments, commissions, boards, bureaus, agencies and offices thereof, and the orders, rules regulations and requirements of the water, sewer, electrical or other inspection departments of the City of Boston and Board of Fire Underwriters (or any other body now or hereafter constituted exercising similar functions), whether such laws, ordinances, orders, rules, regulations and requirements are foreseen or unforeseen, ordinary or

extraordinary, and whether or not the same require structural repairs or alterations. The Tenant will, likewise, observe and comply with the requirements of all policies of public liability, fire and all other policies of insurance at any time in force with reference to the Property (or Improvements thereon). The provisions and conditions of Sections 13.2 and 13.4 of Article 13 hereof applicable to changes or alterations shall mutatis mutandis, apply to work required to be done under this Section.

The Tenant shall not, however, be in violation of the foregoing requirements when, in good faith, it contests, by appropriate legal proceedings, the validity or applicability of any law, ordinance, order, rule, regulation or requirement of any governmental agency and, unless civil or criminal liability against the Landlord may result therefrom, the Tenant may delay compliance therewith until the final determination of such proceeding, provided, in the case of any contest and delay in compliance:

(a) the Tenant shall notify the Landlord forthwith, upon notice or knowledge of any violation or alleged violation of any such law, ordinance, order, rule, regulation or requirement, of its intention to contest the same; and, thereafter, shall, from time to time, and on the request of the Landlord, advise the Landlord of the status of any such proceedings;

(b) the Tenant shall indemnify, save harmless and defend the Landlord (with counsel of Tenant's

selection, but subject to approval by Landlord, which approval shall not be unreasonably withheld), from any loss, cost, liability or expense which may be incurred by the Landlord by reason of such non-compliance or delay;

(c) the Tenant shall prosecute such contest of validity or applicability to conclusion with all due diligence; and

(d) the Tenant shall pay over to the Depository, on the request of the Landlord, security for the faithful performance and observance of its obligation to comply with any such law, ordinance, order, rule regulation or requirement, and for the payment of any penalties which may accrue by reason of non-performance or delay in compliance therewith, if it should be finally determined that the same is valid and applicable.

The provisions of Section 4.6 hereof (relative to the contest of Impositions) shall be applicable, mutatis mutandis, to the time, amounts and kind of security which the Landlord may require under this Section, and the holding and disposition of the same, to the end that, for this purpose, the cost and expense of possible compliance with governmental requirements aforesaid shall be treated as an Imposition.

5.5 The Tenant agrees to indemnify, defend (with counsel of the Tenant's selection, but subject to approval

by Landlord, which approval shall not unreasonably be withheld), and save harmless the Landlord against and from any and all claims by or on behalf of any person, firm or corporation, arising during the term of this Lease or any period in which tenant shall occupy any part or all of the Property from the conduct or management of or from any work or thing whatsoever done in or about the Property, and will further indemnify, defend (with counsel of the Tenant's selection, but subject to approval by Landlord, which approval shall not unreasonably be withheld) and save harmless the Landlord against and from any and all claims arising during (even though asserted after) the term of this Lease from any condition of the Property, or arising from any breach or default on the part of the Tenant in the performance of any covenant or agreement on the part of the Tenant to be performed under the terms of the Lease, or arising from any act or neglect of the Tenant or any of its agents, contractors, servants, employees or licensees, or anyone claiming by, through or under the Tenant, or arising from any accident, injury or damage whatsoever caused to any person, firm or corporation occurring during the term of this Lease, in or about the Property. Notwithstanding the foregoing, nothing herein shall obligate the Tenant to indemnify, defend or save harmless the Landlord from any claims arising solely out of the negligence or default of Landlord, its agents, contractors, servants or employees.

5.6 The Tenant agrees to pay and be liable for the payment of all costs and charges, including the reasonable fees of counsel engaged by the Landlord and the amounts of all judgments and decrees in any action or proceeding incurred in exercising rights of the Landlord under this Lease on account of any default or breach of condition by the Tenant, or occurrence of condition which, under this Lease, confers upon the Landlord the right to exercise remedies available to the Landlord in the event of default of the Tenant, including, without limitation, such costs and expenses incurred in enforcing the Landlord's right to possession of the Property after the expiration or earlier termination of the term of this Lease to the extent the Landlord prevails in such actions or proceedings.

5.7 For the purposes of this Article, sidewalks which adjoin or abut the Leased Premises and the areas referred to under Article 3.3 hereof, shall, to the maximum extent permissible according to law throughout the term of this Lease, be kept by Tenant free of accumulation of dirt, rubbish, snow and ice. The Landlord and Tenant agree that no commercial activities shall be conducted upon the areas referred to in the preceding sentence without their mutual written consent.

To the extent that legal liability for maintenance thereof is imposed upon any private owner of property in the jurisdiction in which the Leased Premises lies, the Tenant shall perform the obligations on the part of any such owner

required to be performed under applicable law with respect to any other public areas, such as streets and vaults, adjoining the Leased Premises, for which under applicable law, a private owner of property abutting the same may be responsible.

ARTICLE 6

CESSATION OF USE; NO ABATEMENT OF RENT

6.1 Except as otherwise specifically provided in this Lease, this Lease shall not be terminated, the respective obligations of the parties shall not be affected and no abatement, refund, offset, diminution or reduction of Base Rent, Percentage Rent or amounts due as additional rent shall be claimed by or allowed to Tenant or any person claiming by, through or under Tenant, under any circumstances whatsoever, whether for inconvenience, discomfort, interruption, cessation or loss of business, or otherwise, or whether arising from the making or alterations, changes, additions, improvements or repairs to any building or other Improvements now on, under or above or which may hereafter be erected on, under or above the Leased Premises, or whether by virtue or because of any present or

future governmental laws, ordinances, regulations, direction or action, or for any other cause or reason whatsoever and whether or not stated in or implied by the foregoing.

ARTICLE 7

DESIGN REVIEW; CONSTRUCTION OF IMPROVEMENTS;

CERTIFICATE OF COMPLETION

7.1 (a) The Design Review Procedure attached to this ease as Exhibit "D" sets forth the formal stages of submissions and approvals of the Schematic Design, the Design Development and the Contract Documents (collectively, the "Design Materials") for the Improvements to be constructed and installed by the Tenant in the redevelopment of the Leased Premises. In the event that any provision of the Design Review Procedure shall be inconsistent with any other provision of this Lease, then this Lease shall prevail over such inconsistent provision; otherwise, the Design Review Procedure shall be treated as supplemental to this Lease.

The scope of review by the Landlord of Design Materials submitted in accordance with this Article 7 and the Design Review Procedure shall not extend to the design or layout of interior spaces not visible by the general public, nor to structural, electrical, mechanical or plumbing designs except to the extent that the selection of any structural, electrical, mechanical or plumbing system impacts the design of exterior elements of the Improvements.

(b) Within sixty (60) days after the date hereof, Tenant shall submit to Landlord the Contract Documents for the Improvements (as described in the Design Review Procedure) provided, however, that Tenant shall not be required to submit structural, electrical, mechanical or plumbing plans and specifications except to the extent that such systems impact the exterior elements of the Improvements. The Landlord shall review the Contract Documents for conformity with the approved Design Development and shall, within ten (10) business days of receipt thereof, either approve the Contract Documents or notify the Tenant in writing of disapproval, specifying the respects in which the Contract Documents are disapproved.

In the event of a disapproval, the Tenant shall, within thirty (30) days after the Tenant receives the written notice of such disapproval, resubmit the Contract Documents altered in those respects specified by the Landlord as the grounds for disapproval. The resubmission shall be subject to the review and approval of the Landlord in accordance with the Design Review Procedure and the timetable hereinabove provided for an original submission, until the Contract Documents shall be approved by the Landlord.

If the Tenant receives no notification from the Landlord of such disapproval within ten (10) business days after submission of the Contract Documents or any correction thereof, as the case may be, such Contract Documents or corrected Contract Documents shall be deemed approved by the Landlord.

(c) The Landlord hereby acknowledges that it is the intention of the Tenant to undertake the Improvements in a manner which will qualify as the rehabilitation of a "certified historic structure" as defined in Section 48(g) of the Internal Revenue Code

of 1954, as amended, which will require that the Secretary of the Interior of the United States (hereinafter referred to as the "Secretary"), approve the Contract Documents for and the construction of the Improvements. The Landlord hereby agrees that it shall administer the Design Review Procedure and the granting of approvals of Design Materials hereunder consistent with the requirements of said Secretary. In any case in which there shall be a conflict between the requirements of the Landlord and the requirements of the Secretary for approval under Section 48(g) of the Internal Revenue Code, as amended, of the Design Material or construction of the Improvements, and such conflict is not resolved within thirty (30) days after the Secretary notifies the Tenant of such requirements, the requirements of said Secretary shall govern and shall bind the Landlord with respect to the items required by the Secretary.

(d) With respect to approvals of the Landlord under this Article 7.1(a) through 7.1(c), above, once approval has been given of a submission stage, further review will be limited to consideration of the development or refinement of the previously approved submissions or to new elements which were not present in previous submissions.

(e) The Landlord acknowledges that the construction of the Improvements as shown in the

Schematic Design requires the issuance to the Tenant of federal, state and municipal permits and approvals, some of which may depend upon examination of various elements of the Premises, including without limitation, approval by the Secretary and environmental impacts not fully assessed on the date hereof. If the Tenant is unable to obtain all such necessary permits and approvals for construction of such Improvements, the Tenant shall redesign the Improvements to conform to any limitations or conditions imposed by the Secretary or such environmental review or in any such permit or approval, and the Landlord shall recognize any such limitation or condition in its response to submissions of Design Materials by the Tenant hereunder. In the event any such resubmission is required, the times for performance of the Tenant's obligations pursuant to this Agreement shall be extended for the periods of time required for the preparation of such resubmission.

(f) If the approved Schematic Design, Design Development or the Contract Documents for the Improvements shall be at variance with any development or dimensional controls of the Plan applicable to the Site, the Landlord shall adopt such minor modifications to such Plans as may be necessary to construct the Improvements in accordance with the approved Design Materials.

(g) As part of its submission of Contract Documents, or prior to submission of completed Contract Documents but after approval or deemed approval of Design Development, the Tenant may submit plans and specifications prepared by the Architect for purposes of commencing work with respect to certain elements of the Improvements which may include site work, interior demolition, foundation work and other similar items which the Tenant proposes to commence on a "fast-track" basis. The Landlord will promptly review said plans and specifications for "fast-track" construction and shall approve commencement of work on specific "fast-track" construction elements which are demonstrated to the satisfaction of the Landlord to be consistent with those portions of the Design Materials previously approved and with elements of the Contract Documents, if any have then been submitted by the Tenant, which are acceptable to the Landlord. As a condition to proceeding with construction of any "fast-track" element, Tenant must deliver to Landlord a copy of the construction contract for construction of such "fast-track" elements, a building permit for such "fast-track" elements and a performance and payment bond for such elements.

7.2 Landlord acknowledges that, prior to the execution of this Lease, Tenant has submitted to Landlord and Landlord has approved the Schematic Design and the Design Development

for the Improvements and Landlord has granted Design Development Approval by letter, a copy of which is filed in the Director's office and numbered 022686, thus Tenant has fulfilled all Schematic and Design Development requirements established therefor by the Design Review Procedure.

7.3 Tenant shall not apply for a building permit with respect to all or any part of the Improvements or with respect to any changes or alterations requiring Landlord's approval under Section 8.1 hereof without the prior certification of Landlord that the work to be done or completed as set forth in the permit application is in accordance with said Final Working Drawings and Specifications, as initially approved by Landlord as deemed approved pursuant hereto, or as subsequently amended and approved by Landlord. No work shall be done with respect to all or any part of the Improvements or with respect to such changes or alterations unless such work conforms with such approved, or amended and approved, Final Working Drawings and Specifications for that portion of the work to be performed. Notwithstanding the foregoing, Tenant may with Landlord's approval, apply for a building permit prior to the completion of Final Working Drawings for the purpose of commencing work with respect to certain elements of the Improvements in accordance with the procedures set forth in section 7.1(g) of this Lease.

7.4 With respect to the Improvements:

(a) The Tenant shall begin the construction of the Improvements in accordance with the approved Final Working Drawings and Specifications as soon after the Lease Commencement Date as is reasonably practicable.

(b) The Tenant shall diligently prosecute to completion the construction of the Improvements and shall substantially complete such construction not later than eighteen (18) months from the of the Lease Commencement Date or such additional time beyond such eighteen (18) month period (as such 18 month period may be extended pursuant to Section 7.10 hereof) as may be approved by Landlord, which approval shall not be unreasonably withheld. Withholding of consent requested because of financial difficulties shall not be treated as unreasonable action by Landlord.

(c) Tenant shall submit to Landlord for its approval a detailed estimated progress schedule at the time construction of the Improvements is begun. This schedule shall be resubmitted not more often than quarterly until the construction of the Improvements has been completed, with actual progress shown in each submission. Each submission shall be accompanied by a written report by Tenant citing any adjustments to the progress forecast, analyzing the causes thereof, and, where applicable, noting corrective efforts. Such work of Tenant shall be subject to inspection by representatives of Landlord, and Landlord shall

endeavor to notify Tenant promptly of any respects in which Landlord observes that Tenant is not proceeding with construction of the Improvements as required by this Lease and shall promptly furnish to Tenant copies of all reports prepared by representatives of Landlord in connection with such inspections. Upon receipt of such notification, Tenant shall promptly undertake and proceed diligently to cure any such defects to the reasonable satisfaction of Landlord. Nothing herein shall be treated as allowing the Tenant an extension of time deadlines without Landlord's prior written consent (except as provided in Section 7.10 hereof), nor shall Landlord's inspections or actions or failure to act hereunder render Landlord liable to Tenant or any other party for failure of the Improvements to be constructed as required by the terms of the Lease.

(d) No change order or modification (referred hereinafter as "Change Orders") for an addition to or extension of the Improvements (as shown on the Final Working Drawings and Specifications) which would affect in any way the external appearance of public lobbies, arcades, open spaces or landscaping, or the external

appearance of any building (including roof and penthouse) shall be issued or implemented unless such Change Order shall have been submitted to and approved in writing by Landlord prior to its issuance and implementation. If Landlord shall neither approve nor disapprove in writing within ten (10) days of receipt by it of a notice containing such Change Order, then it shall be treated as having been approved. In the event Tenant shall fail to comply with the foregoing requirements, Landlord may, within a reasonable time after discovery thereof by Landlord, direct in writing that Tenant modify or reconstruct such portion or portions of the Improvements erected or being erected as are not in conformance with the approved Final Working Drawings and Specifications or any approved modifications thereof or Change Order therefor, so as to bring them into conformance therewith. Tenant shall promptly comply with such a directive. In addition to any other remedies available under this lease, Landlord may enforce the provisions of this subsection (d) by an action in a court of appropriate jurisdiction to compel specific performance. Tenant shall send Landlord a copy of any other change order or modification relating to the Improvements as soon as the same has been approved by the Architect.

7.5 Tenant shall not discharge the Architect or General Contractor without cause or hire new or additional

architects or general contractors or substantially alter or substantially amend the contract for architectural services between the Architect and the Tenant or the construction contract between the Tenant and the General Contractor without in each instance obtaining the prior written consent of Landlord which consent Landlord shall not unreasonably withhold.

7.6 No sign shall be erected or placed on the exterior of any Improvement on the Leased Premises, or on any portion of the Leased Premises which is not enclosed within a building, or which is visible to the public from outside a building, unless the character, location, design, size, shape, form and lighting of such sign shall have been approved by Landlord in writing, which approval Landlord shall not unreasonably withhold. Without limiting in any way the scope of Landlord's review, no sign shall be approved which does not meet the following standards. Signs may only be erected or placed upon the ground floor street facade of each store, if any, or other individual ground floor use. Flashing signs, and signs relating to businesses other than those on the Leased Premises, shall not be permitted. All allowed signs shall conform to applicable laws and regulations, including the Boston Sign Code.

7.7. Tenant shall provide as part of the Improvements, and off-site work performed by Tenant (including without limitation, work within the areas referred to in Exhibit "A") in connection with and relating to the construction of

the Improvements works of art reasonably satisfactory to Landlord and shall expend for such works of art a sum at least equal to one percent (1%) of the construction costs. In this connection, Tenant shall include in the Final Working Drawings and Specifications submitted to Landlord a general program for employment of art to support and enhance the Improvements. The term "works of art" as used herein shall include ornaments, arrangements, or effects created through the use of sculpture, bas-relief, mosaics, frescos, murals, prints, tapestries, paintings, fountains which are sculptural in themselves or designed to enhance the setting of the sculpture, and non-standard street and open space treatments and other improvements, including the restoration of historical artifacts within the building, having an increment of aesthetic value as approved by the Landlord. The Landlord agrees that all or a portion of the aforementioned 1% amount to be expended to acquire suitable works of art may be expended off site as a contribution to enhance the facilities or as a contribution to the operating budget of any cultural institution as may be mutually agreed upon between Landlord and Tenant.

7.8 It is the general policy of Landlord that all buildings constructed or rehabilitated in urban renewal project areas shall be so designed to accomodate persons who are physically handicapped. In furtherance of this policy, and without limiting Tenant's obligation to comply with all legal requirements applicable thereto, the Design Materials

(including the Contract Documents) shall include provisions conforming, insofar as practical, with the rules and regulations promulgated by the Architectural Barriers Board of the Commonwealth of Massachusetts, which rules and regulations, as amended from time to time, are hereby incorporated herein by reference. Landlord shall take into consideration the provisions and objectives of such Specifications in its review of and action upon the Final Working Drawings and Specifications.

7.9 Tenant shall erect and properly maintain at all times as required by the conditions and the progress of work performed by or at the request of Tenant from time to time during the term of this Lease, all necessary safeguards for the protection of workmen and the public.

7.10 Tenant agrees for itself and every successor in interest to the leasehold estate in the Leased Premises, or any part thereof, that Tenant will take all steps necessary to enable it to, and that it will, commence construction of the Improvements, and that it will diligently prosecute and complete the same, in accordance with the times set forth therefore in Section 7.4(a) and (b) hereof; provided however, that Tenant's obligations under Sections 7.4(a) and (b) hereof are subject only to delays occasioned by acts of God, general unavailability of labor or materials, governmental restrictions, strikes and other labor difficulties not caused by Tenant or like causes beyond the reasonable control of the Tenant but financial inability to

proceed shall never be treated as a cause beyond the Tenant's reasonable control.

It is intended and agreed that the agreements and covenants contained in Section 7.4 hereof shall be covenants running with the land and that they shall be, in any event, and without regard to technical classification or designation, legal or otherwise, and, except only as otherwise specifically provided in this Lease, to the fullest extent permitted by law and equity, binding for the benefit of the Landlord and enforceable by Landlord against Tenant and every successor in interest to or of the leasehold estate in the Leased Premises or any part thereof or any interest therein.

Landlord shall cooperate with and assist Tenant in every reasonable way in Tenant's efforts to obtain all governmental consents, approvals, permits or variances which may be required for the construction of the Improvements, but this obligation shall not require the expenditure of any monies by Landlord (including, without limitation, expenditures for permits or approvals of any type).

7.11 Landlord shall during the term of this Lease comply with the terms and provisions of the Cooperation Agreement relating to the Plan between it and the City of Boston, dated _____ (which is hereby incorporated herein by reference), and shall enforce all of its rights thereunder, to the extent such enforcement shall

be necessary in Tenant's reasonable judgment to enable Tenant to meet its obligations hereunder.

7.12 The Improvements shall be deemed substantially completed for the purposes of this Lease when built in accordance with the provisions of this Lease, the approved Final Working Drawings and Specifications, and any approved modifications thereof, except for (i) items of work and adjustment of equipment and fixtures which can be completed after occupancy has been taken, i.e. so-called punch list items, (ii) landscaping which cannot then be completed because of climatic conditions, and (iii) with respect to the office and retail space, items of work normally left for completion pursuant to the requirements of specific Occupancy Tenant of any portion or portions of said office and retail space such as the construction of interior partitions and doors, the distribution of electrical outlets and switches, the location of ventilation ducts and returns, the placement of lighting fixtures, and the installation of ceilings. The construction of the Improvements shall incontestably be deemed substantially completed for the purposes of this Lease upon the issuance of a Certificate of Completion by the Landlord.

If the Landlord issues a Certificate of Completion prior to completion of the work described in clauses (i) and (ii) above and any and all other work which, in the reasonable opinion of the Landlord should be completed prior to the issuance of a Certificate of Completion, then the

Tenant shall deposit with the Landlord, or, if required by any mortgagee, with the holder of the first mortgage on the Property pursuant to an escrow or holdback agreement approved by the Landlord, as security for the completion of such work an amount which, in the opinion of the Landlord, would cover the cost of such completion. Said deposit, if deposited with the Landlord, shall be in cash or by certified check or by other security satisfactory to the Landlord. The deposit shall be delivered simultaneously with the issuance of the Certificate of Completion. If such work is not so completed to the satisfaction of the Landlord, within a reasonable time after the issuance of such Certificate of Completion, and in any event within one (1) year of such issuance, except for the work described in clause (iii) above which shall be completed within a reasonable time of the leasing of each portion of such space, then the Landlord may apply such deposit to completion of such work.

Promptly after substantial completion of the Improvements in accordance with the provisions of this Lease, the Landlord will furnish the Tenant with the Certificate of Completion so certifying. Such certification by the Landlord shall be a conclusive determination of satisfaction and termination of the agreements and covenants in this Lease with respect to the obligations of the Tenant and its successors and assigns to commence and complete the Improvements, except that such certification and such

determination shall not constitute evidence of compliance with or satisfaction of any obligation of the Tenant to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to finance the Improvements or any part thereof.

The certification provided for in this Section 7.12 shall be in such form as will enable recordation in the Registry of Deeds for Suffolk County, Commonwealth of Massachusetts or registration with the Suffolk Registry District of the Land Court.

Tenant agrees that Landlord shall be under no obligation to issue a Certificate of Completion until such time as the Landlord has had a reasonable opportunity to inspect the Improvements constructed pursuant to the provisions of this Lease, the Final Working Drawings and Specifications (as modified by any Change Order approved by Landlord), provided, however, that the Landlord shall not be required to make an inspection hereunder unless the Tenant has requested by written notice to Landlord requesting that it issue a Certificate of Completion. For purposes of this Section, a reasonable opportunity for inspection shall be thirty (30) days from the receipt of Tenant's request for a Certificate of Completion.

If, after inspection of the Improvements, Landlord shall refuse or fail to issue a Certificate of Completion in accordance with the provisions of this Section 7.12, Landlord shall, within thirty (30) days after receipt by

Landlord of a notice containing a written request by Tenant, provide Tenant with a written statement, indicating in adequate detail in what respect Tenant has failed to substantially complete the Improvements in accordance with the provisions of this Lease, and what measures or actions will be necessary in the reasonable opinion of Landlord for Tenant to take or perform in order to obtain a Certificate of Completion. If Landlord shall refuse or fail to provide Tenant with such a written statement within thirty (30) days of a request therefor by Tenant, the Improvements shall be deemed to have been completed in accordance with the Final Plans and Specifications and the Certificate of Completion shall be deemed to have been issued.

7.13 Within one hundred and twenty (120) days of the issuance of the Certificate of Completion, Tenant shall provide Landlord with a statement of Total Project Costs, except for the costs related to the work described in Section 7.12 (iii), certified by a certified public accountant. Such statement shall be prepared in accordance with and guided by the accounting industry standards, and shall be subject to Landlord's approval which approval shall not be unreasonably withheld. If Landlord shall refuse or fail to approve such statement in accordance with the provisions of this Section 7.13, Landlord shall, within thirty (30) days after receipt of such statement, provide Tenant with a written statement indicating in adequate detail in what respect the statement is unsatisfactory to

Landlord and what modifications will be necessary, in the opinion of Landlord, for Tenant to make such statement to conform to accounting industry standards. If Landlord shall refuse or fail to provide Tenant with such written statement within thirty (30) days after receipt of such a statement, the statement shall be deemed to have been approved by the Landlord.

ARTICLE 8

CHANGES AND ALTERATIONS

8.1 After the Improvements required by this Lease to be constructed by the Tenant on the Leased Premises or any portion thereof have been completed, the Tenant shall not, without the prior written approval of Landlord, reconstruct, demolish, subtract therefrom, make any additions thereto or extensions thereof, or change the materials, design, dimensions or color thereof, nor permit the same by any Occupancy Tenant or any other person, if such reconstruction, demolition, subtraction, addition, extension or change would affect in any way the external appearance of public lobbies, arcades, open spaces or landscaping, or the external appearance of any building (including roof and penthouse) except that the restoration of the Improvements (including emergency repairs) after a casualty or eminent

domain taking to the condition required to exist prior to such event, shall not require Landlord's approval.

8.2 In requesting such approval, Tenant shall submit to Landlord for its approval such plans, specifications and other materials for the proposed work as are required by the Design Review Procedure attached as Exhibit "D" and Article 7 to this Lease, all within such reasonable time limits as Landlord shall require therefor.

8.3 If Landlord shall consent to any alterations, addition, change or modification requiring such consent under Section 8.1 hereof, the same shall be accomplished by Tenant in compliance with these requirements:

(a) No work shall be undertaken until the Tenant shall have produced and paid for, or caused to be paid for, so far as the same may be required from time to time, all governmental permits and authorizations of the various governmental agencies having jurisdiction. The Landlord agrees to join in the application for such permits or authorizations whenever such action is necessary, but at the Tenant's sole cost and expense.

(b) No work shall be undertaken until the Tenant shall have presented evidence acceptable to Landlord of Tenant's ability to pay for the cost thereof. All such decisions made by Landlord shall be based upon a reasonableness standard.

(c) Any work, the cost of which is reasonably estimated at Two Hundred Thousand Dollars (\$200,000) or

more, shall not be undertaken or permitted, except after compliance with the requirements of Article 13, below.

8.4 If the Tenant shall fail to comply with the foregoing requirements of this Article 8, the Landlord may, without limiting other remedies available to it, direct in writing that the Tenant modify, reconstruct or remove any work done without the prior written approval of the Landlord. The Tenant shall promptly comply with such a directive, and shall not proceed further with any work until such directive is satisfied. Landlord shall apply a reasonableness standard to any such directive.

ARTICLE 9

MECHANICS' AND OTHER LIENS

9.1 The Tenant agrees that it shall not suffer or permit any mechanics', laborers' materialmen's or other liens to attach against or be filed against the Property or any part thereof, by reason of work, labor, services or materials supplied or claimed to have been supplied to or on behalf of the Tenant or to anyone claiming by, through or under the Tenant (Landlord and Tenant hereby expressly

agreeing that Landlord shall have no liability whatsoever on account of any such liens, such liability being hereby expressly denied and prohibited). If any mechanics', laborers' materialmen's or other liens shall at any time be filed against the Property, or any part thereof, the Tenant shall cause the same to be discharged of record within forty-five (45) days after the date of filing the same unless, within such forty-five (45) day period, the Tenant shall furnish the Landlord with satisfactory evidence that it has instituted appropriate legal proceedings to contest any such lien which will prevent the enforcement thereof prior to the final determination of such proceedings and has deposited with the Depository, or with the Court in which the lien is being contested, money in an amount sufficient in Landlord's reasonable opinion from time to time to assure payment of the lien, together with interest, penalties, court costs and attorneys' fees arising in such proceedings, or a surety bond reasonably satisfactory to Landlord, for an amount sufficient to guarantee the payment of such lien, together with interest, penalties, court costs and attorneys' fees.

9.2 The Tenant agrees diligently to prosecute such proceedings to a final determination or conclusion. If the Tenant shall fail to discharge such mechanics', laborers', materialmen's or other liens within such period or, in the event it desires to contest such lien by appropriate legal proceedings, fails to comply with any of the foregoing

requirements in connection therewith and diligently to prosecute such proceedings to a final determination or conclusion, then, in addition to any other right or remedy by the Landlord, the Landlord may, but shall not be obligated to, discharge the same either by requiring the Depository to pay (to the extent of the monies hereby held by it) the amount claimed to be due or by procuring the discharge of such lien by deposit in Court or by giving security or in such manner as is, or may be, prescribed by law. Any amount paid by the Landlord for any of the aforesaid purposes, and all reasonable legal and other expenses of the Landlord incident to obtaining the discharge of such liens, with all necessary disbursements in connection therewith, with interest thereon at the rate hereinafter set forth from date of payment, shall be paid by the Tenant to the Landlord on demand, and, if unpaid, may be treated as additional rent due hereunder.

Nothing contained in this Article shall imply any consent or agreement on the part of the Landlord to subject the Landlord's estate to liability under any mechanics', materialmen's or other lien law.

ARTICLE 10

INSURANCE

10.1 The Tenant shall, at the Tenant's sole cost and expense, keep the Improvements and the Building Service

Equipment (but not including moveable trade fixtures, machinery and equipment) insured in the name of the Tenant and the Landlord and the Leasehold Mortgagee, if required by the Leasehold Mortgagee (and if the Leasehold Mortgagee agrees that the proceeds thereof shall be applied in accordance with the provisions of this Lease), as their respective interests may appear: (1) against loss or damage by fire and (2) against such other risks as Landlord may reasonably require and as are now or may hereafter be covered on buildings similar in construction, general location, use and occupancy, to the Improvements, including, but without limiting the generality of the foregoing, windstorm, hail, explosion, riot and civil commotion, damage from aircraft and vehicles and smoke damage, together with so-called demolition and increased cost of reconstruction coverage, as and when insurance against such risks is obtainable. The amount of insurance shall be equal to the replacement cost thereof (which shall mean actual replacement cost without deduction for physical depreciation), excluding excavation costs and costs of foundations, footings and underground installations. The replacement cost thereof shall be accepted by the company issuing such casualty loss policy and evidenced by an "agreed amount endorsement" or waiver of coinsurance, or other evidence satisfactory to Landlord. Not more

frequently than annually, the Landlord shall have the right to notify the Tenant that it elects to have the replacement cost redetermined by the insurance company then providing coverage. The redetermination shall be made promptly in such manner as is acceptable to Landlord, the insurance company, and the Leasehold Mortgagee and each party shall be promptly notified of the results. The insurance policy shall be adjusted according to the redetermination, and Tenant shall pay any increase in the premiums.

10.2 Tenant shall, at its sole expense, procure and maintain during the term hereof rent or rental value insurance naming Tenant and Landlord as insureds, as their interests may appear, in an amount equal to not less than one hundred percent (100%) of (i) the annual Base Rent due Landlord hereunder, and (ii) the annual Percentage Rent due Landlord hereunder (based upon the actual amount of Percentage Rent paid Landlord for the most recent Lease Year preceding the date of the insurance contract).

10.3 The Tenant shall also maintain, at the Tenant's sole cost and expense, but for the mutual benefit of the Landlord and the Tenant, and in the name of the Landlord and the Tenant, and the Leasehold Mortgagee, if required by the Leasehold Mortgagee:

(a) comprehensive general public liability insurance against claims for personal injury, death or property damage occurring upon, in or about the Leased Premises or the Improvements or any elevators or

escalators therein, and on, in or about the adjoining streets and passageways, such insurance to afford protection with combined single limit coverage of not less than One Million Dollars (\$1,000,000). Such insurance shall provide coverage not only on an accident basis but also on an occurrence basis; and such limits shall be subject to increases as Landlord may from time to time reasonably require;

(b) steam boiler insurance on all steam boilers, pressure boilers or other apparatus in such amounts as Landlord may from time to time reasonably require;

(c) war damage insurance (whenever such insurance shall be written by, through or with the aid of any governmental agency or authority and a state of war or public emergency exists) upon the Improvements and the Building Service Equipment to the replacement cost thereof (which shall mean actual replacement costs without deduction for physical depreciation), including foundations and underground installations, or to the maximum amount of coverage which may be obtained, if less than the replacement cost, as aforesaid;

(d) flood insurance in such amount as Landlord may reasonably require, if the Leased Premises shall be situated in an area designated by the United States Government, or any political subdivision thereof, as a "flood hazard area" or by whatever designation the result of which is to require such insurance coverage

as a condition to obtaining a mortgage loan from a federally regulated institution; and

(e) such other forms of insurance (including broadened coverage of existing insurance) and in such amounts as Landlord may from time to time reasonably require consistent with the requirements of institutional lenders with respect to like properties in Boston.

10.4 Every insured loss shall be adjusted and settled promptly by the parties (including the Leasehold Mortgagee, if the Leasehold Mortgagee is named as an insured on any policy as permitted by this Lease) and the insurer. The discussions and negotiations with the insurer respecting adjustment and settlement shall be primarily conducted by Tenant but any proposed settlement must be finally approved by the Landlord, and the Leasehold Mortgagee if the Leasehold Mortgagee is named as an insured. All insurance proceeds and all amounts payable as a result or such settlements (collectively, "Proceeds") (less, in either case, costs, fees and expenses incurred in the collection thereof, which shall be paid out of such proceeds) shall be paid to the Depository and applied by it as hereinafter set forth.

10.5 Proceeds from rental insurance, less any cost of recovery, shall be applied to the Tenant's obligation for the payment of the Base Rent, Percentage Rent, additional

rent and to satisfy any other unpaid obligation of Tenant to Landlord hereunder and the Tenant shall be relieved from its obligation to make such payments to the extent that such Proceeds are so applied. The balance of Proceeds from rental insurance, if any, shall be paid first to the Leasehold Mortgagee as its interests shall appear and then to the Tenant if the Tenant is not then in default hereunder.

10.6 Proceeds attributable to any casualty shall be applied by the Depository to the repair and restoration of Improvements and Building Service Equipment in accordance with the provisions of Article 11 and Article 13 hereof, or if the Proceeds shall be less than Two Hundred Thousand Dollars (\$200,000) and the Tenant shall not be in default hereunder, such Proceeds shall be paid to the Tenant, which agrees to use the same to accomplish repair or restoration as required by this Lease and to retain the balance, if any, after such repair or restoration as Tenant's absolute and unconditional property subject to the rights of any Leasehold Mortgagee, provided, however, that if this Lease should terminate because of the Tenant's default prior to the time that the Tenant has made or completed such repair or restoration, such Proceeds shall be paid to the Landlord as its absolute and unconditional property. Notwithstanding the foregoing, if this Lease should terminate under those circumstances in which a Leasehold Mortgagee has the right to demand and does in fact demand a new lease in accordance

with the provisions of subparagraph 23(h), then upon the execution of such new lease, such Proceeds shall, if less than \$200,000, be paid over to the Leasehold Mortgagee or its designee as Tenant under such new lease or if in excess of \$200,000, to the Depository and shall be disbursed for the purposes of repair and restoration and any excess disposed of in accordance with the provisions of this Paragraph 10.6.

10.7 Other Proceeds shall be applied by the Depository as the Landlord and Tenant direct.

10.8 All policies of insurance hereinbefore referred to shall be written in companies authorized to do business in the Commonwealth of Massachusetts satisfactory to the Landlord, and shall be written in such form as shall be acceptable to the Landlord. All policies of insurance shall provide that any act or negligence of Tenant shall not prejudice the rights of Landlord as a party insured under said policies, and notwithstanding the fact that the Landlord has agreed that the proceeds of such insurance shall be used in the restoration or rebuilding of Improvements and Building Service Equipment located upon the Leased Premises. All policies of insurance shall contain an agreement by the insurers that such policies shall not be cancelled or materially changed without at least thirty (30) days' prior written notice to the Landlord, the Leasehold Mortgagee and such other parties as may be named as insureds thereunder.

The Tenant shall deliver to the Landlord, on or before the commencement of the term of this Lease, all such policies of insurance (or certificates or certified copies thereof, if the original of any such policy is required to be delivered to a Leasehold Mortgagee), in the amounts and covering the risks hereinabove provided, endorsed "Premium Paid" by the company or agency issuing the same, and the Tenant shall deliver to the Landlord, not less than thirty (30) days' prior to the expiration of any then current policy, a new policy in replacement thereof, endorsed "Premium Paid" by the company or agency issuing the same. However, if the insurance is carried under a blanket policy, as permitted by Section 10.10 hereof, the Tenant may deliver certifications thereof, specifying the amount of insurance allocated to the Property in lieu of the original policy, as long as the possession of such certificates confers upon the holder thereof the same rights as the holder would have if in possession of the original of such insurance policies.

10.9 During the course of any construction of the Improvements or of any construction requiring Landlord's approval under Section 8.1 hereof, and in any other situation when such coverage may be appropriate, Tenant shall carry and pay, or cause to be carried and paid for (i) appropriate builder's risk insurance and (ii) owner's contingent or protective liability insurance naming Landlord as an additional insured covering claims not covered by or under the terms of the above-required comprehensive public

liability insurance, with combined single limit coverage of not less than One Million Dollars (\$1,000,000).

In addition thereto, at any other time when the Tenant maintains employees incident to operations on the Property, the Tenant shall also carry and pay for, or cause to be carried and paid for, workers' compensation insurance in statutory amounts covering all persons (other than employees of the Landlord, if any), with respect to whom death or injury claims could be asserted against the Property or any part thereof, or the interests of the Landlord or the Tenant therein.

The Tenant shall deliver to the Landlord certificates of insurance evidencing all workers' compensation insurance policies and renewals thereof, promptly as and when such policies are issued and renewed. The Tenant's fulfillment of the statutory requirements relating to self-insurance under workers' compensation laws shall, upon proof of such compliance satisfactory to the Landlord, be treated as compliance with the workers' compensation insurance requirements of this Article.

10.10 Any insurance required to be furnished by the Tenant may be effected by a policy or policies of blanket insurance, provided, however, that the amount of the total insurance allocated to the Property, as herein defined, shall be such as to furnish in protection the equivalent of separate policies in the amounts herein required, and provided further that, in all other respects, any such

policy or policies shall comply with the other provisions of this Lease.

10.11 The aforesaid minimum limits of insurance policies shall in no event limit the liability of Tenant hereunder. Insofar as and to the extent that the following provision may be effective without invalidating or making it impossible to secure insurance coverage obtainable from responsible insurance companies doing business in Massachusetts (even though extra premium may result therefrom) Landlord and Tenant mutually agree that, with respect to any loss which is covered by insurance then being carried by them, respectively, the one carrying such insurance and suffering said loss releases the other of and from any and all claims with respect to such loss; and they further mutually agree that their respective insurance companies shall have no right of subrogation against the other on account thereof. If, at the written request of one party, this release and nonsubrogation provision is waived, then the obligation of reimbursement shall cease for such period of time as such waiver shall be effective, but nothing contained in this Section shall be deemed to modify or otherwise affect releases elsewhere herein contained of either party for claims. Tenant shall bear all costs incurred by either party in complying with this Section 10.11.

ARTICLE 11

DAMAGE TO OR DESTRUCTION OF THE PROPERTY

11.1 The Tenant agrees that, in case of damage to or destruction of any part of the Property by fire or otherwise, or should any part of the Property become untenable or unuseable for any reason, this Lease shall not terminate nor shall the respective rights or obligations of the Landlord and the Tenant be affected in any way, except as specifically provided in this Lease.

The terms "damage or destruction," for the purposes of applying this provision of this Lease, shall refer to any condition requiring correction to make the Property, or any part thereof, tenantable or useable for its intended purposes.

11.2 The Tenant agrees that, in the event of any damage or destruction, the Tenant shall promptly notify the Landlord. Tenant, at its sole cost and expense, shall promptly repair, restore and rebuild the Property, or cause the same to be repaired, restored and rebuilt, so that, upon the completion thereof, the Property shall have been restored to the condition required immediately prior to such damage or destruction. The provisions and conditions of Article 13 governing procedures applicable to restoration, changes or alterations of Improvements shall be applicable to work required to be done under this Article.

11.3 All Proceeds (except as otherwise provided in Section 10.5 with respect to rent insurance) shall be held and applied to the payment of the cost of repairing, restoring and rebuilding required by this Article in accordance with the provisions of Section 10.6 and Article 13 hereof.

ARTICLE 12

CONDEMNATION

12.1 With respect to any exercise of the power of eminent domain (hereinafter referred to as a "Proceeding") or any agreement in lieu of condemnation (hereinafter referred to in this Article as an "Agreement") between the Landlord, the Tenant and those authorized or purporting to be authorized to exercise the power of eminent domain, for a conveyance to a condemning authority (such conveyance being hereafter in this Article referred to as "conveyed" or as a "conveyance"), the Tenant and the Leasehold Mortgagee, in cooperation with the Landlord, shall have the right to participate in negotiations, any Proceeding or any Agreement leading to an Award (as hereinafter defined) to protect their respective interests hereunder. The total Net Award made in such Proceeding or the consideration paid or payable pursuant to such Agreement (hereinafter collectively or separately referred to as the "Award"), shall be paid by

whomever received to the Depository, which shall apply the same as herein provided. The term "Net Award" shall mean the total Award, less all costs, expenses and attorneys' fees incurred in the collection thereof.

12.2 If, during the term of this Lease, the entire Property shall be taken as a result of a Proceeding or an Agreement, this Lease and all right, title and interest of the Tenant hereunder shall terminate and come to an end on the date title shall vest in the condemning authority pursuant to such Proceeding or Agreement, but shall not terminate as to the Award. In that event, the rent, additional rent, Impositions or other charges herein provided to be paid by the Tenant shall be apportioned to the date title shall vest in the condemning authority in such Proceedings or pursuant to such Agreement and any amounts prepaid by Tenant in excess of its liability based on such apportionment shall be refunded by Landlord to the Tenant. As to any such taking, the Net Award shall be distributed as follows:

(a) The following values shall be determined as of the date title is vested in the condemning authority in such Proceeding or pursuant to such Agreement by agreement of the parties or, failing such agreement, by appraisal in the manner set forth in Section 12.2(c) hereof:

(1) The value of Landlord's interest in the Property. This shall be the then fair market value of

the Leased Premises as encumbered by this Lease plus the residual value of the Improvements and the Building Service Equipment, all determined as if no taking had occurred; and

(2) The value of Tenant's interest in the Property. This shall be the then fair market value of the Improvements and the Building Service Equipment recognizing that the residual value of the Improvements and the Building Service Equipment belongs to Landlord at the expiration of the terms of this Lease, plus the value of the leasehold interest under this lease, taking into account the amounts to be paid and other obligations to be performed by Tenant under this Lease, all determined as if no taking had occurred.

(b) After making the determinations described in subparagraph (a), above, the Net Award shall be applied as follows:

(i) First, to the Landlord as a first charge against the Net Award, an amount equal to the present value (determined by using a discount rate equal to the rate of interest called for by Section 34.9 hereof), as of the date title is vested in the condemning authority, of the Base Rent until the Lease Expiration Date.

(ii) Second, to the holder of the first Leasehold Mortgage for the account of Tenant, and as a second charge against the Net Award, an

amount equal to the outstanding indebtedness secured by the first Leasehold Mortgage.

(iii) Third, to the Landlord or the Tenant as the case may be, the amount which is necessary to bring the amounts paid to Landlord under (i), above, and to the Leasehold Mortgagee for the account of Tenant under (ii), above, into proportion based on the ratio of (1) representing Landlord's interest in the Net Award, and (2) representing Tenant's interest in the Net Award, as determined above.

(iv) The balance, if any, shall be paid to Landlord and Tenant in proportion to their respective interests determined in accordance with the ratio of (1) to (2) after deducting from Landlord's share the amount paid under (i), above, and after deducting from Tenant's share the amount paid under (ii), above, and after deducting the amount paid under (iii), above, from the share of the party to whom paid.

(c) If the Landlord and the Tenant are unable to agree on the values to be determined under Section 12.2(a), the values shall be set by an independent panel of three appraisers, each of whom shall have recognized expertise, and not less than five (5) years professional experience in the valuation of downtown, large-scale urban commercial real estate in the City of

Boston, of whom one is to be selected by the Landlord, one is to be selected by the Tenant, and the third is to be selected by mutual agreement of the two first selected. Such appraisal shall be made at the request of either Landlord or Tenant, and shall be carried forward expeditiously once requested. In the event that the panel cannot agree upon a value, then the determination of the appraiser shall be controlling. Each party shall pay its own appraiser's fees and costs and one-half (1/2) of the fees and costs of the third appraiser.

12.3 If, during the term of this Lease, a part of the Property shall be taken or conveyed, and such taking or conveyance does not diminish any portion of the Leased Premises which the Tenant is permitted hereunder to lease to Occupancy Tenants, this Lease shall terminate as to the part of the Property which is taken, upon the date title is vested in the condemning authority in such Proceeding or pursuant to such Agreement, but this Lease shall continue in full force and effect as to the remainder of the Property. Notwithstanding the foregoing, the Tenant hereby waives any and all claims against the Landlord or the City of Boston to awards of damages, if any, to compensate for the closing, laying out or change of grade of any street or other public way within or fronting or abutting on the Leased Premises which, pursuant to the Plan, is to be or is closed, laid out or changed in grade. The Landlord hereby waives the right

to any share of the award of damages to the Landlord's interest in the Property arising out of any taking made by the Landlord.

As to any such taking (or portion thereof) for which compensation has not been waived by the Tenant, the Net Award shall be distributed as follows:

(i) Subject to the provisions of Article 13 hereof, first to the Tenant, to the extent of and as a first charge against the Net Award, an amount not exceeding the actual cost reasonably incurred by the Tenant of performing restoration of the Property and any other obligation under the Lease imposed upon Tenant as the result of the taking.

(ii) The balance, if any, of the Net Award shall be paid to the Landlord.

12.4 (a) If, during the term of this Lease, a part of the Property shall be taken or conveyed, and such taking or conveyance diminishes any portion of the Leased Premises which the Tenant is permitted hereunder to lease to Occupancy Tenants, this Lease shall terminate and come to an end as to the part of the Property which is taken, upon the date title is vested in the condemning authority in such Proceeding or pursuant to such Agreement, but shall not terminate as to the Award for the part of the Property which is taken, and otherwise this Lease shall continue in full force and effect as to the remainder of the Property, subject to the provisions of Section 12.4(b) hereof.

If there is a taking of the type provided for in this Section 12.4, then, as to the part of the Property not so taken, the Tenant covenants and agrees, for itself and its successors in interest, that the Tenant shall, at its sole cost and expense (subject to reimbursement to the extent hereinafter provided), promptly restore that portion of the Property not so taken to a complete architectural unit for the use and occupancy of the Tenant (and those claiming under Tenant) as expressed in this Lease. The provisions and conditions in Article 13 hereof applicable shall apply to the work required to be done under this Section. As to any such taking, the Net Award shall be distributed as follows:

(i) First to the Tenant, to the extent of and as a first charge against the Net Award, an amount not exceeding the actual cost reasonably incurred by the Tenant of performing its obligations under this Lease imposed upon Tenant as the result of the taking.

(ii) The balance of the Net Award, if any, shall be apportioned between the Landlord and the Tenant in the same manner as the balance of a Net Award apportioned under Subsection 12.2(b)(iii).

If there is a taking provided for in this Section and the restoration of the Property results in Improvements of lesser internal leasable area than the Improvements prior to the taking, Base Rent shall be abated from and after the

date of taking in proportion to the diminution of the total internal leasable area of the Improvements, but otherwise there shall be no abatement in or reduction of the rent or other charges.

(b) In the event a taking provided for in this Section 12.4 so diminishes or impairs the use of the Improvements that, notwithstanding restoration, the Tenant would be unable to make any kind of economic use of the remainder thereof for the purposes permitted by this Lease, the Tenant, at its option exercisable by notice to Landlord given not later than ninety (90) days after title is vested in the condemning authority in such Proceeding or pursuant to such Agreement, may terminate this Lease as of such date. The rent, Impositions or other charges herein provided to be paid by the Tenant shall be apportioned to said date and any amounts prepaid by Tenant in excess of its liability based on such apportionment shall be refunded by the Landlord to the Tenant. In the event Tenant elects to so terminate this Lease, the Net Award shall be allocated and distributed in the manner provided in Section 12.2, except that the value of Landlord's interest in the Net Award determined under Subsection 12.2(a)(1) shall be reduced by the value of the portion of the Leased Premises, the Improvements and the Building Service Equipment not taken and the amount to be applied under Subsection 12.2(b)(i) shall be reduced

by the discounted fair rental value of the portion of the Leased Premises not taken for the unexpired portion of the term of this Lease.

12.5 If there shall be a taking or conveyance, as aforesaid, of any vault or other space not included within the Leased Premises as above described, or a taking or conveyance which shall result in the removal of projecting portions of any Improvements upon any street for which the Tenant is not entitled to compensation as a matter of law, or a taking or conveyance of an underground right-of-way for a subway, conduit or other purpose not necessitating the demolition or substantial alteration of any portion of any of the Improvements, any such taking or conveyance shall not be treated as a taking of any part of the Leased Premises or the Property for the purposes of this Article, this Lease shall not be affected by any such taking or conveyance of the nature in this Section 12.5 referred to, any alteration required because of a taking or conveyance of the nature in this Section 12.5 provided, shall be done by the Tenant, and the provisions and conditions of Article 13 shall apply to any alteration required to be done under this Section.

12.6 If the use of the Leased Premises or the Improvements, or any part thereof, shall be taken by the exercise of the power of eminent domain for a period of time, definite or indefinite, whether or not for the entire unexpired portion of the term of this Lease or for a period greater than the same, this Lease shall, nevertheless,

continue in full force and effect and the Tenant shall have the right (except as hereinafter provided) to receive the entire Award (which Award, in the case provided for by this Section 12.6, is called the "Use Award") which is allocable to that part of the unexpired portion of the term of this Lease to which the Use Award relates. The Tenant shall have no rights against the Landlord by reason of such taking, including, without limitation, any right to an abatement of rent or any other charges payable by the Tenant, or the performance of any obligation to be performed by the Tenant, and the rights and liabilities of the Landlord and the Tenant to each other shall be the same as if there had been no such taking. Notwithstanding, the Tenant and the Leasehold Mortgagee, in cooperation with the Landlord, shall have the right to participate in negotiations relative to any such taking or the Use Award in order to be certain that their respective interests thereunder are protected, with all cost and expense thereof to be a first charge against the Use Award.

The Use Award shall be paid, however, by the Tenant to the Depository for application as hereinafter set forth, after deduction therefrom of all cost and expense reasonably incurred incident to obtaining such Use Award.

The Use Award shall be held and disbursed as follows:

- (a) If the same is payable in monthly or other periodic installments, such installments shall, as

received by the Depository, be applied on account of, and to the extent of, the Tenant's obligations on account of annual rental and proportionate shares of other charges payable by the Tenant on account of such period; and the dollar value of obligations to be performed by the Tenant shall, on a proportionate basis, also be satisfied from such periodic installments.

Any balance of such periodic installments remaining shall be applied to or for the account of the Tenant, except that, if such taking shall be for a period extending beyond the expiration of the term of this Lease, the Landlord (or such Institution) shall be entitled to the entire Use Award attributable to the period after such expiration;

(b) Where the Use Award is in a lump sum or payable in installments less frequently than quarterly, the lump sum or other installments, together with investment earnings thereon, if any, shall be divided by the number of months included in the period for which such Award has been made and the quotient thereof shall be applied monthly, in accordance with subparagraph (a), above; and

(c) To the extent a Use Award is allocable to the cost of repairs and restoration following the termination of a temporary taking, the same shall be

treated as Proceeds, within the meaning of Article 13, below, and applied consistent therewith.

ARTICLE 13

CONDITIONS GOVERNING REPAIR, RESTORATION, CHANGES AND ALTERATIONS

13.1 Whenever, under provisions of Article 11 or Article 12 of this Lease, the Tenant shall be obligated to restore, rebuild, repair or make alterations to the Property, the cost of which will exceed Two Hundred Thousand Dollars (\$200,000) (or, in and after the twenty-fifth Lease Year, the amount being equivalent in value at the time in question to Two Hundred Thousand (\$200,000) in 1985, herein call the "value equivalent"), the amount of the Proceeds, or the amount of the Net Award (which amounts are hereinafter collectively referred to in this Article as "Amounts"), as the case may be, shall be held and disbursed in accordance with the following provisions:

(a) Amounts on account of any casualty loss, Proceeding or Agreement, (hereinafer collectively referred to as the "Event"), shall be delivered to the Depository as soon as available and in all events prior to commencement of the work of repair and restoration (hereinafter referred to as the "Work");

(b) Tenant shall submit to Landlord, for the approval of Landlord, a schedule of the estimated cost

of the Work to be performed in accordance with the plans and specifications approved by the Landlord pursuant to Section 13.2;

(c) Before the commencement of the Work, Tenant shall pay to the Depository a sum equal to the amount by which the estimated cost of the Work, as determined by Landlord on the basis of Tenant's estimate as approved by the Landlord, exceeds the Amounts theretofor delivered to the Depository under Section 13.1(a);

(d) During the progress of the Work, Tenant shall submit to Landlord and the Depository, at periodic intervals, but not more frequently than quarterly, a certificate approved as to accuracy by Tenant's architect or engineer and by any consultant engaged by Landlord under subparagraph (f) of this Section 13.1, showing the cost of labor and materials incorporated into the Work, or suitably stored at the Leased Premises, during the period specified in the certificate and the amount properly due and owing to contractors and suppliers on account thereof, which period shall not include any part of the period covered by any other such certificate, and Depository, upon receipt of such certificate and approval(s) thereof, shall pay to Tenant, from the deposit, if any, made with it by Tenant, and, upon the exhaustion thereof,

from the Amounts, ninety percent (90%) of the lesser of such cost or amounts due and owing to contractors and suppliers on account thereof (disregarding any retainage which Tenant may have the right to withhold from amounts due and owing to contractors and suppliers, but which shall include, in making such computation, amounts due and owing to contractors and suppliers on account of work previously done and certified but, as to which, ninety percent (90%) payment thereof has not been made), as shown by such certificate. When required by Landlord and as a condition to any payment by Depository, evidence satisfactory to the Landlord shall be furnished to the effect that the Depository is holding sums so deposited and Amounts remaining undisbursed which are sufficient for the payment of all remaining costs of the Work. If such evidence shall indicate the Depository is not holding funds which are so sufficient, the Tenant shall forthwith deposit with the Depository the amount of the deficit, which it shall hold and disburse as above set forth;

(e) Upon completion of the Work and delivery to Landlord and Depository of a certificate from Tenant that the Work has been completed and all bills for labor and materials incurred in connection therewith have been paid, supported by a surety company bond or title evidence for which provision is hereinafter made,

assuring such payment, together with a certificate from the Tenant's architect or engineer that the Work has been completed in accordance with the Final Working Drawings and Specifications (as amended, with Landlord's approval), the Depository shall, in the case of Amounts which are Proceeds of insurance, pay the balance in its possession to the Tenant, and, in the case of the Proceeds of any Proceeding or Agreement, apply the balance first to reimbursement to Tenant under (c) or (d) and then to the Landlord, the Tenant and anyone claiming by, through or under the Tenant (including the Leasehold Mortgagee), those portions of any balance in Depository's possession to which the respective parties may be entitled pursuant to Subsection 12.4(a)(ii); and

(f) If Landlord determines that, prior to giving its approval to any plans and specifications or estimated schedule of costs, or before honoring certificates calling for payment from the funds to be deposited with Landlord, it is appropriate to retain, for itself, independent professional assistance of an architectural or engineering consultant, Landlord shall have the right to do so, and, if the Tenant shall not be proceeding as required hereunder with respect to prosecution of the Work, the reasonable fees and expenses of such consultant for such services shall be

paid by Tenant and shall be treated as part of the cost of the Work in determining amounts required to be made available for such purposes.

13.2(a) Any restoration, rebuilding, repair or alteration undertaken by Tenant pursuant to Article 11 or 12 of this Lease, the cost of which will exceed Two Hundred Thousand Dollars (\$200,000) (or, in and after the twenty-fifth Lease Year, the value equivalent) or any construction requiring approval of the Landlord under Section 8.1 hereof shall produce Improvements conforming to the Final Working Drawings and Specifications identified in Exhibit "E" attached hereto, or in accordance with such amended working drawings and specifications as from time to time Tenant may propose and Landlord may approve. In the event that Tenant shall propose such amended working drawings and specifications, Tenant shall comply with the provisions of the Design Review Procedure and the provisions of Section 7.2, 7.3(c) and 7.4 through 7.11, inclusive, of this Lease shall be applicable to such restoration, rebuilding, repair or alteration.

13.2(b) In the event that Tenant determines and Landlord concurs, that major structural rebuilding or restoration is desirable and further that it is not efficient to use granite, Tenant may submit alternate materials for Landlord's approval. In such an event, the Landlord agrees to allow the Tenant to use a modern material which affords an appearance similar to the extent possible to the original material.

13.3 Reconstruction, demolition, subtractions, additions, extensions or changes which Tenant proposes to make in accordance with the terms of Article 8 hereof, shall be subject to this Article, by which it is intended that such changes or alterations shall be treated as being attributable to an Event, within the meaning of Section 13.1 hereof, the changes or alterations shall be treated as Work within the meaning of 13.1, and all requirements in Section 13.1 dealing with the conditions under which the Work may proceed, shall be applicable to such changes or alterations, except that no deposit need be made with the Depository if, in fact, the changes or alterations proposed do not arise from an Event.

13.4 As to all Work governed by this Article (including Article 11 Work), the Tenant shall promptly commence and diligently complete the same within a reasonable time, subject only to delays occasioned by timing of receipts of Amounts, claims arising from an Event, acts of God, general unavailability of labor or materials, governmental restrictions or like causes beyond the reasonable control of the Tenant, but financial inability (except delays in pursuing claims for and receipts of Amounts) to proceed shall never be treated as a cause beyond the Tenant's control.

13.5 Whenever payments are made to or for the account of the Tenant under this Article, the Landlord and/or the Depository shall be entitled to require, concurrently

therewith, assurance, by means of a surety company bond, title insurance or an opinion from a reputable attorney acceptable to Landlord that no claims on account of mechanics' or materialmen's liens may arise on account of work performed or materials supplied covered by the Tenant's certificate, on the basis of which the Depository makes such payment.

13.6 With regard to the terms of this Article 13, any time the Tenant is required to submit items to the Landlord for its approval, Tenant shall likewise submit such items to the Qualifying Leasehold Mortgage for its approval upon the same terms and conditions and with the same effect as with respect to Landlord.

ARTICLE 14

WASTE

14.1 The Tenant covenants not to do or suffer any waste or damage, disfigurement or injury to the Property, or permit or suffer any overloading of the floors of the Improvements thereof.

ARTICLE 15

INSPECTION OF PREMISES

15.1 The Tenant agrees to permit the Landlord and its authorized representatives to enter the Property at all times during usual business hours for the purpose of inspecting the same and for the purpose of making any necessary repairs to the Property or performing any work therein that the Tenant has failed to make or perform and which Landlord may reasonably determine to be necessary to comply with any laws, ordinances, rules, regulations or requirements of any public authority or to prevent waste or deterioration in connection with the Property. The Landlord shall not be entitled to exercise rights hereunder other than inspection except after the expiration of any grace periods available to Tenant or except where Landlord shall determine that prompt attention is required to prevent injury to persons or property or to the Improvements, in

which latter situation Landlord shall give to Tenant such notice, if any, as may be appropriate in the circumstances.

Nothing herein shall imply any duty upon the part of the Landlord to do any such work which, under any provision of this Lease, the Tenant may be required to perform, and the performance thereof by the Landlord shall not constitute a waiver of the Tenant's default in failing to perform the same.

The Landlord may, during the progress of any work performed by it on the Leased Premises, keep and store upon the Leased Premises, in a manner that will not interfere substantially with the rights of any subtenant, all necessary materials, tools and equipment. The Landlord shall not, in any event, be liable for inconvenience, annoyance, disturbance, loss of business or other direct or consequential damage to the Tenant by reason of making repairs or the performance of any work on the Leased Premises, or on account of bringing materials, supplies and equipment onto or through the Leased Premises during the course thereof, and the obligations of the Tenant under this Lease shall not thereby be affected in any manner whatsoever.

15.2 The Landlord is hereby given the right during usual business hours to enter the Property during the term for the purpose of showing the same to prospective purchasers and mortgagees, where the reasonable business purposes of the Landlord make such display appropriate, and

during the final twelve (12) months of the term of this Lease, to exhibit the same to prospective tenants. Where, under any provision of this Article 15, access is sought by Landlord to areas not normally accessible to the public, Landlord shall give Tenant forty-eight (48) hours' prior notice before entering the Property and Tenant shall make such areas available for entry by Landlord.

ARTICLE 16

PAYMENTS TO PUBLIC UTILITIES

16.1 Tenant shall pay, or cause to be paid when due, all use and consumption charges and service fees and the like for all public utilities used upon or furnished to the Property during the term hereof, including, without limitation, charges for water, gas, electricity and telephone service.

16.2 In addition to paying for all utility use and consumption charges and service fees as hereinabove required, the Tenant shall also, at its sole cost and expense, procure any and all necessary permits, licenses or other authorizations required for the lawful and proper installation and maintenance upon the Property of poles,

wires, pipes, conduits, tubes and other equipment and appliances for use in supplying any utilities servicing the Property.

ARTICLE 17

LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS

17.1 The Tenant covenants and agrees that, if it shall at any time fail to make required payments of principal and interest under any Leasehold Mortgage permitted pursuant to the provisions hereof, or fail to pay any Imposition pursuant to the provisions of Article 4, hereof, or to take out, pay for, maintain or deliver any of the insurance policies provided for in Article 10 hereof, or shall fail to make any other payment, perform any other act or comply with any other covenant on its part to be made, performed or complied with as provided in this Lease, and in any such case such failure shall have continued beyond any grace, permitted delay or notice period herein or in any such Leasehold Mortgage provided for the payment or performance thereof, the Landlord shall have the right, without any obligation to do so, without waiving Landlord's other rights or remedies hereunder and without notice to or demand upon the Tenant in an emergency or otherwise, after ten (10) days' notice, and without waiving or releasing the Tenant from any obligations of the Tenant contained in this Lease,

pay any such mortgage payment, pay any Imposition, effect any such insurance coverage and pay premiums therefor, and may make any other payment, perform any other act or comply with any other covenant on the part of the Tenant to be made, performed and complied with, as provided in this Lease, in such manner and to such extent as the Landlord may deem desirable, and, in exercising any such rights, pay necessary and incidental reasonable costs and expenses, and employ counsel and incur and pay their reasonable fees and expenses.

17.2 Tenant shall on demand reimburse Landlord for all amounts expended by or on behalf of Landlord under Section 17.1 and the same shall be treated as additional rent hereunder. Interest thereon at the rate hereinafer set forth shall be paid thereon from the date Landlord shall make any such expenditure.

ARTICLE 18

LANDLORD'S REMEDIES AND BREACH

18.1 Upon an "Event of Default" (as defined herein) Landlord shall have the following remedies, in addition to all other rights and remedies provided by law or otherwise provided in this Lease, to which Landlord may resort cumulatively, or in the alternative and in any order:

(a) Landlord may, at Landlord's election, keep this Lease in effect and enforce all of its rights and remedies under this Lease, including the right to recover the rent and other sums as they become due by appropriate legal action.

(b) Landlord may, at Landlord's election, terminate this Lease by giving Tenant one hundred twenty (120) days' prior written notice of termination. In accordance with the terms of this Lease, all of Tenant's right in the Property shall terminate upon expiration of such notice period and Tenant shall surrender and vacate the Property in broom clean condition, and Landlord may re-enter and take

possession of the Property and eject Tenant or any Occupancy Tenant, or any other person or persons claiming any right under or through Tenant or eject some and not others or eject none; provided, however, that Landlord shall not eject any Occupancy Tenants who Landlord is required to recognize pursuant to Section 20.1 hereof. This Lease may also be terminated by judgment specifically providing for termination. Any termination under this Section shall not relieve Tenant from the payment of any sums then due to Landlord or from any claim for damages or rent previously accrued or then accruing against Tenant. In no event shall any one or more of the following actions taken by Landlord, after the occurrence of an Event of Default, in the absence of a written election by Landlord to terminate this Lease, constitute a termination of this Lease:

(i) Appointment of a receiver in order to protect Landlord's interest hereunder;

(ii) Consent to any subletting of the Property or assignment of this Lease by Tenant, whether pursuant to the provisions hereof with relation to assignemnt or subletting, or otherwise;

(iii) Any other action by Landlord or Landlord's agents intended to mitigate the adverse effects of any breach of this Lease by Tenant, including, without limitation, action to maintain and preserve the Property or any action taken to relet the Property, or any portions thereof, for the account of Tenant and in the name of Tenant.

(c) Landlord may at Landlord's election re-enter and take possession of the Property and, without terminating this Lease, and at any time from time to time, relet the Property or any part of parts of it for the account and in the names of Tenant or otherwise. Tenant shall nevertheless pay to Landlord on the due dates specified in this Lease all sums required of Tenant under this Lease, plus Landlord's expenses, less the proceeds of any such reletting. No act by or on behalf of Landlord, including those described in subparagraphs (b)(i), (ii) and (iii), above, under this provision shall constitute a termination of Tenant's right to possession under this Lease unless Landlord

gives Tenant written notice of termination as set forth hereinabove.

(d) In the event Landlord terminates this Lease, Landlord shall be entitled at Landlord's election to damages in the following sums:

(i) The worth at the time of award of the unpaid rent which has been earned at the time of termination; plus

(ii) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the fair market rental value reasonably achievable for such period; plus

(iii) The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the fair market rental value reasonably achievable for such period; and

(iv) Any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform Tenant's obligations under this Lease, or which in the ordinary course of things would be likely to result therefrom, including, without limitation, the following: (v) expenses for cleaning, repairing or restoring the Property; (w) expenses

for altering, remodeling, or otherwise improving the Property for the purpose of reletting including installation of leasehold improvements (whether such installation be funded by a reduction of rent, direct payment or allowance to Tenant, or otherwise); (x) broker's fees, normal and required costs of carrying the Property such as taxes and insurance premiums thereon, utilities and security precautions; (y) expenses in retaking possession of the Property; and (z) attorneys' fees and court costs.

(v) The "worth at the time of award" of the amounts referred to in subparagraphs (i) and (ii), above, is computed by allowing interest at the rate hereinafter set forth. The "worth at the time of award" of the amount referred to in subparagraph (iii), above, is computed by discounting such amount at the discount rate of the Federal Reserve Bank of Boston at the time of the award.

(vi) For purposes hereof, there shall be treated as Percentage Rent for any period after any default an amount at an annual rate equal to the average annual Percentage Rent which the Tenant was obligated to pay to the Landlord under this Lease either (y) from the commencement of the term hereof to the date of such default, or (z)

during the last three (3) Lease Years prior to the date of such default -- whichever is the greater.

(vii) In any instance in which a Leasehold Mortgagee exercises the right to cure or to demand a new lease in accordance with the provisions of Paragraph 23 of this Lease, such cure shall include the worth of all unpaid rent as hereinabove defined, earned through the date on which such cure is tendered or with respect to a demand for a new lease, the worth of all such unpaid rent earned through the date on which rent under such new lease commences to accrue, plus, in either instance, all damages which would be due to landlord under Subparagraph (iv) above.

18.2 A breach of this Lease shall exist if any of the following events (severally "Event of Default" and collectively "Events of Default") shall occur:

(a) Tenant shall have failed to pay the Base Rent or the Percentage Rent when and as the same shall be due and payable and such failure shall continue for a period of thirty (30) days after written notice from Landlord;

(b) Tenant shall have failed to pay any other charge, additional rent, Imposition or any obligation of Tenant requiring the payment of money under the terms of this Lease (other than the payment of Base

Rent or Percentage Rent) for sixty (60) days after written notice from Landlord;

(c) Tenant shall have failed to perform any term, covenant or condition of this Lease to be performed by Tenant, except those requiring the payment of money, and Tenant shall have failed to cure the same within one hundred and twenty (120) days after written notice from Landlord, except that, where such failure could not reasonably be cured within said one hundred and twenty (120) day period, Tenant shall not be in default, and no Event of Default shall exist, unless Tenant has failed to promptly commence and thereafter be continuing to make diligent and reasonable efforts to cure such failure as soon as practicable;

(d) Tenant shall have made a general assignment of its assets for the benefit of its creditors;

(e) Tenant shall have abandoned the Leased Premises;

(f) (i) A court shall have made or entered any decree or order adjudging Tenant to be bankrupt or insolvent; (ii) a petition seeking reorganization of Tenant or an arrangement under the bankruptcy laws or any other applicable debtor's relief law or statute of the United States or any State thereof is filed against Tenant and not dismissed within one hundred and twenty (120) days thereafter; (iii) a receiver, trustee or

assignee of Tenant in bankruptcy or insolvency or for its property is appointed and not discharged within one hundred and twenty (120) days thereafter; (iv) a court shall have made or entered any decree directing the winding up or liquidation of Tenant and such decrees or order shall have continued for a period of one hundred and twenty (120) days; or (v) Tenant shall have voluntarily submitted to or filed a petition seeking any such decree or order;

(g) The sequestration or attachment of or execution or other levy on Tenant's interest in this Lease or the Leased Premises or any Improvements located thereon shall have occurred and Tenant shall have failed to obtain a return or release of such property within sixty (60) days thereafter, or prior to sale pursuant to such levy, whichever first occurs; or

(h) Tenant shall have admitted in writing its inability to meet its debts as they mature.

ARICLE 19

ASSIGNMENT

19.1 This Lease is being entered into as a means of permitting and encouraging the development of the Leased Premises in accordance with the terms hereof and not for

speculation in landholding. Tenant acknowledges that, in view of:

(a) the importance of the undertaking set forth herein to the Landlord;

(b) the substantial public aids that have been and/or will be made available by law, the federal government and the City for the purpose of making such undertakings possible (without however, acknowledging or denying that any installations or structures which have or may be added to the Premises by Tenant were added with "federal aid" as that term is used in Paragraph 3 on Page 11 of a certain deed from the United States of America to Landlord dated July 7, 1978 and recorded with Suffolk County Registry of Deeds, Book 8182, Page 149.)

(c) the importance of the identity of the parties in control of the Tenant and the Property; and

(d) the fact that a transfer of all or part of the legal or beneficial ownership in the Tenant, or any other act or transaction involving or resulting in a significant change in ownership or distribution of such ownership is for practical purposes a transfer or disposition of the interest in the Property then owned by Tenant; the qualifications and identity of Tenant are of particular concern to the Landlord. Tenant

further recognizes that it is because of such qualifications and identity that the Landlord is entering into this Lease, and, in so doing, is further willing to accept and rely on the obligations of the Tenant for the faithful performance of all undertakings and covenants hereby to be performed by it.

19.2 For the reasons set forth in Section 19.1 hereof and, except as otherwise provided herein and in Article 20 hereof and in Article 23 hereof, it is hereby agreed that, commencing on the Lease Commencement Date and continuing for a period five (5) years from the issuance by the Landlord of the Certificate of Completion with respect to the Improvements:

(a) No transfer (by assignment or otherwise) of all or any substantial part of Tenant's rights under this Lease or of the Tenant's interest in the leasehold estate created hereby or the Property shall be made or suffered.

(b) No transfer or change of legal or beneficial interests in Tenant (or any successor entity to the Tenant permitted hereunder) and no transfer of any general partnership interests in the Tenant by sale, pledge or otherwise, shall be made or suffered. The Prohibitions expressed in (a) and (b), above, against transfer of Tenant's interest under this Lease

and against transfer of a legal or beneficial interest in Tenant shall not apply to the following:

(i) a transfer by reason of death or legal incapacity of an individual;

(ii) the granting of a Leasehold Mortgage, or to a transfer by the holder of a Leasehold Mortgage or by any party holding in good faith by, through or under a Leasehold Mortgage;

(iii) transfers not exceeding in the aggregate ten percent (10%) of the general partners' interests in Tenant (legal or beneficial) or not exceeding in the aggregate fifty percent (50%) of the stock or other form of ownership interest in any general partner of the Tenant which has less than ten percent (10%) of the total general partner interests;

(iv) transfers of limited partnership interests in Tenant.

After the end of the five year period subsequent to the issuance of the Certificate of Completion, there may be made a transfer otherwise prohibited prior to such time, but only with the prior written consent of the Landlord. Landlord agrees not to unreasonably withhold such consent, taking into consideration the reputation, experience in management of real estate and financial capacity of any proposed transferee to perform the obligations of Tenant hereunder. Where

Landlord has given such consent to Tenant to effect any proposed transfer, such transfer shall be effective in the case of a transfer of the leasehold interest hereunder only if the Improvements are transferred concurrently therewith as hereinafter set forth and in all cases only upon compliance with the following conditions:

(a) At the time of such transfer, there shall not exist hereunder any Event of Default or any event which would become an Event of Default with notice and the passage of time therefrom;

(b) The Tenant shall have furnished or caused to be furnished to Landlord assurances by the transferee reasonably satisfactory to Landlord that the transferee is not insolvent and will not be rendered insolvent by assumption of the obligations of the Tenant under this Lease. For the purposes of this provision, insolvency shall mean and include inability to meet the obligations of the transferee as and when the same become due and payable; and

(c) In the case of a transfer of the leasehold interest hereunder, other than the grant of a Leasehold Mortgage, such transferee shall assume, by written instrument reasonably satisfactory to the Landlord, directly with the Landlord, the obligations on the part of the Tenant to be performed and observed under this Lease.

Nothing contained in Article 19 shall prevent, restrict or limit in any way the transfer of limited partner's interests or the admission of limited partners to the partnership.

19.3 No transfer of the Tenant's interest under this Lease shall be effective unless accomplished by suitable written instrument recorded in the office in which, by law, records relating to real estate in Boston, Massachusetts are required to be filed to be effective against bona fide purchasers for value of such property, and a true and correct copy thereof, certified as such by the transferor and the transferee, shall have been sent to the Landlord in the same fashion in which notices are required to be given under the terms of this Lease.

19.4 Tenant shall pay to the Landlord as and when the same are received by or made available to or for the benefit of Tenant, fifteen percent (15%) of all Net Transfer Proceeds. Net transfer proceeds shall be determined by deducting from the transfer price all payments made to third parties and partners on account of obligations of the partnership in the form of notes and/or mortgages, letters of indebtedness, guarantees and the like, repayment to partners of their initial and/or any subsequent capital contribution or any other type of equity investment or loan to the Tenant, all expenses prorated as of the date of transfer which relate to the operation of the Property, including the requirement to fund a cash reserve account,

and all expenses required in connection with the transfer in order to deliver good, clear and marketable leasehold title to the Property. The transfer price shall be the actual cash consideration paid by the transferee to the Tenant.

19.5 For the purposes of this Article 19:

(a) The Tenant agrees that the ownership of this Lease and all of the Tenant's rights, title and interest in and to the Improvements shall be non-separable, and that an attempt to transfer any of the Tenant's right, title or interest in the Improvements shall be null and void and a breach of this Lease, unless accompanied by a transfer and assignment of the Tenant's estate under this Lease.

(b) References herein to transfer of the Tenant's interest in this Lease of the Tenant's estate mean a sale, assignment or other disposition of the entire interest of the Tenant in the Property. Partial transfers shall not be permitted, except for subleases, to which reference is specifically hereinafter made in Article 20.

A sublease of all of the Property for any material part of the term of this Lease (which shall in any event mean a period which is five (5) years or more in duration) shall, for the purposes of this Article 19, be a transfer.

(c) Any transfer which is not permitted hereby and which is made without Landlord's consent shall be void and of no force or effect.

ARTICLE 20

SUBLETTING

20.1 Subject to the use restrictions contained in this Lease, and subject to this Section and the other terms and conditions of this Lease, Tenant may sublet any part of the Property at any time and from time to time to such Occupancy Tenants upon such terms and conditions as Tenant shall deem fit and proper, provided that, before subletting any part or all of the first floor of the Improvements, Tenant shall submit in writing to Landlord for Landlord's approval, a program (the "Leasing Program") for the leasing of the first floor space for the uses described in Section 5.2 of this Lease, setting forth in detail the nature of the particular retail uses proposed, the general area in the Improvements which each such use shall occupy, and such other information as Landlord may require. Notwithstanding the preceding sentence, once Tenant has obtained approval of a Leasing Program it may proceed to make any subletting of first floor space without further submission to Landlord, except to the extent any such subletting would be inconsistent with the approved Leasing Program. In the event of any inconsistency, Tenant shall obtain Landlord's approval of any amendment to the Leasing Program, as

aforesaid, before proceeding with any such subletting. Landlord shall within ten (10) days of the submission of a Leasing Program or the amendment thereto notify Tenant in writing of its approval or disapproval thereof. If no notice of disapproval is given to Tenant within ten (10) days after Landlord's receipt of such submission, the proposed Leasing Program or the amendment thereto shall be deemed approved. Tenant shall have absolute authority to sublet any retail space to any occupant upon any terms Tenant may deem appropriate provided only that each sublease be in conformity with the Leasing Program then in effect.

20.2 Landlord hereby agrees, for the benefit of any Occupancy Tenant under any sublease for use or occupancy of space in or on the Improvements or the Property which meet the requirements of this Article 20 and which meet the following criteria, that, upon termination of this Lease (and notwithstanding any contrary provision required to be included in such leases pursuant to Section 20.3, below, but only as long as such Occupancy Tenant has satisfied its attornment obligations as provided in said Section 20.3) it will recognize and give effect to all such subleases then in effect which (a) have priority over any Leasehold Mortgage or as to which the holders of any Leasehold Mortgage have entered into an agreement to recognize and give effect to such sublease in the event of a foreclosure of any Leasehold Mortgage, and (b) are so-called "net"

leases containing requirements for the payment by such Occupancy Tenant of rental in monthly installments and additional rental for increases in real estate taxes and operating expenses as may have been (at the time of execution of such sublease) customary in leases of rehabilitated office building space in the City of Boston. Landlord shall enter into recordable instruments with any such Occupancy Tenants, as requested by the Tenant, embodying the provisions of this Section 20.2 provided that such instrument requires, as a condition of the Landlord's obligation, that such Occupancy Tenant shall attorn to Landlord simultaneously with such termination (i.e., each such Occupancy Tenant shall agree directly with the Landlord, by written instrument reasonably satisfactory to the Landlord, that it will perform all its obligations as subtenant under such sublease for the benefit of Landlord, as if Landlord were the sub-landlord named in the sublease).

The Tenant covenants and agrees that in the event of the cancellation or termination of this Lease prior to the expiration of the term hereof, unless Landlord shall have previously agreed in writing to recognize any such leases or subleases following the expiration or sooner termination of this Lease, Landlord shall have the option to terminate or cancel each such lease or sublease; provided, with regard to (i) leases or subleases which Landlord shall have agreed in writing to so recognize, and (ii) leases or

subleases which Landlord does not elect to so cancel or terminate, the Occupancy Tenant under each such lease or sublease shall make full and complete attornment to Landlord for the balance of the term of such lease or sublease with the same force and effect as though said lease or sublease were originally made directly from the Landlord to the Occupancy Tenant.

20.3 Each sublease entered into by the Tenant shall contain provisions substantially similar to the following provisions, unless Landlord shall otherwise specifically agree:

"If, at any time during the term of this lease, the landlord of the Demised Premises shall be the holder of a leasehold estate covering premises which include the Demised Premises, and if such leasehold estate shall terminate or be terminated for any reason, the lessee agrees, at the election and upon demand of any owner of the premises which include the Demised Premises, to attorn, from time to time, to any such owner, upon the terms and conditions set forth herein, for the remainder of the term demised by this lease. The foregoing provisions shall inure to the benefit of any such owner, shall apply to the tenancy of the lessee hereunder, and shall be self-operative upon any such demand, without requiring any further instrument to give effect to said provisions. The

lessee hereunder, however, upon demand of any such owner, agrees to execute, from time to time, an instrument in confirmation of the foregoing provisions, satisfactory to such owner, in which the lessee shall acknowledge such attornment and shall set forth the terms and conditions of its tenancy, which shall be the same as those set forth herein and shall apply for the remainder of the term originally demised in this lease. However, until such owner shall require such attornment, or shall otherwise elect, the lessee shall pay to such owner, from and after the time of such termination, the rent and all other charges payable by the lessee and shall perform, for the benefit of such owner, all obligations of the lessee to be performed under its lease. Nothing contained in this paragraph shall be construed to impair any right, privilege or option of any such owner."

20.4 Notwithstanding the foregoing, no subletting shall be made to any Occupancy Tenant of space on the first floor of the Improvements if the terms thereof would be inconsistent with Tenant's Leasing Program, a copy of which is attached hereto and made hereof as Exhibit "F". Such Leasing Program shall not be modified without Landlord's prior written approval.

ARTICLE 21

LANDLORD'S SECURITY INTEREST; COVENANT AGAINST ENCUMBRANCES; ASSIGNMENT OF SUBLEASES

21.1 Further to secure the performance of all the obligations of the Tenant under this Lease, the Tenant hereby assigns to the Landlord all the rents, issues, profits and income under all present and future leases or subleases of all or any portion of the Property to secure the payment of the rents and all other charges payable by the Tenant under this Lease, as well as to secure the performance of all the covenants and provisions of the Tenant under this Lease, the non-occurrence of conditions under this Lease which confer upon the Landlord the right to terminate the same, or cause the termination of the same; and the Landlord shall be entitled, as a matter of right, to have a receiver appointed to take possession of the Property with power to collect the rents, issues, profits and income of the Property and relet the same under order of court or otherwise.

The Landlord agrees that, until a default shall occur hereunder, as to which notice has been given and the time within which to cure has elapsed, including such additional time as is allowed to Leasehold Mortgagee to cure, the Tenant may, subject to the rights and obligations of any Leasehold Mortgagee set out Under Article 23 hereof (and whether such rights exist under its Leasehold Mortgage or

documents given to it as supplemental security for its loan) collect, receive and enjoy the rents, issues, profits and income of the Leased Premises, but the rents shall not be collected more than one month in advance of the due date thereof.

21.2 The Tenant shall have no right or power to, and the Tenant shall not in any way, encumber the fee simple title of the Landlord in and to the Leased Premises or the interest of the Landlord in the Improvements and the Building Service Equipment, if any, nor shall such fee simple estate or other interest of the Landlord be in any way subject to any claim against the Tenant by way of lien, or otherwise, whether arising by operation of law, by express or implied contract or in any other manner, and any such encumbrance or claim by way of lien or otherwise upon the Leased Premises or the Improvements, whether arising by operation of law, by any act or omission of the Tenant or in any other manner, shall accrue only against the Leasehold Estate of the Tenant and the interest of the Tenant in the Improvements and the Building Service Equipment.

If any such encumbrance or claim by way of lien or otherwise shall exist or be asserted against the fee simple title of the Landlord in and to the Leased Premises or against the interest of the Landlord in the Improvements and the Building Service Equipment, then, in addition to any other right or remedy which the Landlord may have under

this Lease or at law or in equity, the Landlord shall have the right, without any obligation to do so, to discharge or pay the same, including the payment of penalties, interest and costs claimed to be due, provided Tenant shall first have been notified of Landlord's intent to take such action and Tenant shall have failed to pay or cause to be discharged such encumbrance or lien within sixty (60) days thereafter. All amounts paid and all costs and expenses incurred by the Landlord (including reasonable attorneys' fees) pursuant to the provisions of this Section, together with interest thereon from the date of any payment or expenditure by Landlord at the annual rate hereinafter set forth, shall constitute additional rent hereunder and shall be payable to the Landlord on demand.

21.3 The Tenant hereby assigns to the Landlord all existing subleases affecting the Leased Premises and the Property, or any part hereof, and shall and does hereby assign any future subleases to the Landlord upon execution thereof, as further security for the payment of the rent reserved hereunder and for the performance of the covenants and provisions contained in this Lease. Such assignment of future subleases to the Landlord shall be in form satisfactory to the Landlord, and this assignment and any future assignments shall permit the Tenant to continue to collect the rent falling due under such subleases, but not more than one month in advance, so long as there shall be

no default under this Lease as to which notice has been given.

The Tenant covenants and agrees under this assignment and under any future assignment that it will not modify any such subleases, so as to reduce the rent, shorten the term or otherwise reduce to any material extent the obligations of any Occupancy Tenant under its sublease, provided that the foregoing shall in no way limit or restrict Tenant's ability to exercise any rights or remedies (including termination) in the event of default by an Occupancy Tenant under its sublease. The Tenant agrees to execute such instruments in confirmation of this assignment, containing such terms and provisions as the Landlord may reasonably require, consistent with the provisions of this Section 21.3.

21.4 The Tenant covenants and agrees to keep, perform and observe all the terms, covenants, provisions and conditions required to be performed and observed by the Tenant as landlord or sub-landlord under each sublease now or hereafter made, to the end that all things shall be done which are necessary to keep unimpaired the Tenant's rights as landlord or sub-landlord under each lease or sublease, and diligently to pursue the remedies legally available to the Tenant as landlord or sub-landlord to require each Occupancy Tenant to keep, perform and observe all of the covenants, provisions and conditions contained in such sublease on the part of such lessee or sub-lessee to be

kept, performed and observed. In the event that the Tenant shall neglect, refuse or fail to do so, the Landlord shall, after fifteen (15) days prior notice to Tenant of Landlord's intent to do so, have the right, without limiting other remedies available to Landlord, to perform and comply with such sublease covenants, agreements and provisions, or may, in the name of the Tenant, pursue all remedies available to the Tenant as landlord of sub-landlord to enforce compliance by said lessee or sublessee with said sublease covenants, agreements, and provisions, and any and all sums expended by the Landlord in performance and compliance therewith, or in the enforcement of such performance or compliance, including costs, expenses and attorneys' fees, shall bear interest from the date of any such expenditures at the annual rate hereinafter set forth until repaid, and shall be paid by the Tenant to the Landlord upon demand and shall constitute additional rent hereunder.

21.5 The assignment by the Tenant to the Landlord of the Tenant's interest in any sublease, or the rents payable thereunder, shall not constitute an assumption by the Landlord of any obligations of the landlord or sub-landlord thereunder, unless and until the Landlord shall specifically otherwise elect; and all subleases executed by the Tenant shall so provide, unless the Landlord shall otherwise consent in writing.

21.6 So long as this Lease shall be in effect and no default shall exist hereunder and, if the interested Leasehold Mortgagee shall be in compliance with provisions hereof then applicable to it, then the rights and interests granted to Landlord under the provisions of Section 21.1 and 21.3 of this Article 21 shall in all events be subject and subordinate to the rights and interests of such Leasehold Mortgagee under all the terms and provisions of any such Leasehold Mortgage and any other instrument or agreement given to secure or in connection with its loan to Tenant.

ARTICLE 22

TITLE TO IMPROVEMENTS; SURRENDER OF THE PROPERTY

22.1 Landlord and Tenant acknowledge and agree that title to the Improvements and the Building Service Equipment is, shall be and shall remain in the Tenant until the termination of this Lease, however the same occurs. However, Tenant agrees that its interest in the Improvements and the Building Service Equipment shall become subject to the terms and conditions of this Lease and that any grantees or assignees of its interest in the Improvements, the Building Service Equipment or this Lease shall take subject to and be bound by the terms and conditions of this Lease, expressly including the following provisions:

(a) Upon the expiration or earlier termination of this Lease, however the same occurs, title to the Improvements and the Building Service Equipment shall automatically vest in the Landlord and the Landlord shall be the sole and absolute owner thereof, free of any right, title, interest or estate of the Tenant therein, without the execution of any further instrument and without payment of any money or other consideration thereof, except, only, that in the event of the termination of this Lease under circumstances allowing the Leasehold Mortgagee to obtain a new lease under the provisions of Section 23.3(h), and, if at that time the Leasehold Mortgagee shall exercise its rights under said Section 23.3(h), then the Tenant's interest in the Improvements and the Building Service Equipment, to the extent then existing, shall automatically pass to, vest in and belong to the Leasehold Mortgagee, or any permitted successor to the Leasehold Mortgagee, or any permitted successor to the Leasehold Mortgagee, until the termination of such new lease, however the same occurs. The Tenant shall execute such further assurances of title as may be requisite. The Tenant hereby grants, releases, transfers, sets over, assigns and conveys to the Landlord all of its right, title and interest in and to the Improvements and the Building Service Equipment effective upon the termination or expiration of this

Lease. Nothing herein contained shall adversely affect Tenant's title to the Improvements and the Building Service Equipment and any right that the Tenant may have to quiet enjoyment and possession so long as this Lease shall continue in force and effect and the Tenant shall not be in default hereunder. Further, until the termination of this Lease, Tenant alone may claim depreciation of the Improvements and Building Service Equipment for all taxation purposes to the extent that it may legally be entitled to make such claim.

(b) The Tenant shall, upon such termination, well and truly surrender and deliver the Leased Premises and deliver the Improvements and the Building Service Equipment, excepting any subtenant's moveable trade fixtures, machinery, equipment and personal property (without any payment or allowance whatever to the Tenant on account of or for the Improvements and the Building Service Equipment or any part thereof) to the possession and use of the Landlord, without fraud or delay and in the same order and condition originally constructed, as from time to time altered not in violation of this Lease, ordinary wear and tear only excepted.

(c) The Tenant covenants and agrees that, without the prior written consent of the Landlord, it will not execute and deliver or renew any sublease to

a subtenant which would extend beyond the then term of this Lease (and, for the purposes of this provision, any rights of extension in any sublease shall be treated as having been exercised by the subtenant), it being the intention of the parties that, except as the Landlord may otherwise agree, the Landlord, at the termination of this Lease, shall be the sole owner of the Property, not subject to any lease or subtenant's rights of any kind.

(d) The Landlord, upon termination of this Lease for any reason, may, without notice, (any notice to quit or intention to re-enter required by law being expressly waived by the Tenant), re-enter upon the Property and possess itself thereof by summary proceedings, ejectment or otherwise, and may dispossess the Tenant and remove the Tenant and all other persons and property from the Property which it may elect so to dispossess, to the extent that it has not theretofore otherwise agreed, and may enjoy the Property and have the right to receive all rents and other income from the same, without hindrance or interference from the Tenant or anyone claiming by, through or under the Tenant. Any personal property of the Tenant remaining on the Property beyond thirty (30) days after termination of this Lease shall be treated as having been abandoned by it and be retained by the Landlord as its sole property or be disposed

of, without liability or accountability, as the Landlord sees fit.

22.2 Tenant shall execute such documentation as Landlord may require to transfer or confirm transfer title to the Improvements and Building Service Equipment to Landlord, as hereinabove set forth.

22.3 If any rule of law shall forbid or frustrate the vesting in Landlord of the title to the Improvements and the Building Services Equipment in accordance with the provisions of this Article, then such vesting of title shall occur not later than twenty-one (21) years after the death of the last survivor of Michael A. White, Laurie A. White, Elizabeth B. White (the children of James B. White, all presently of Lincoln Massachusetts), Alex F. Sirkin, Jacob O. Sirkin all presently of Wayland , (the children of Joel H. Sirkin, all presently of Wayland, Massaschusetts), or Patrick Daley (the child of Paul P. Daley, presently of Cambridge, Massachusetts).

ARTICLE 23

LEASEHOLD MORTGAGES

23.1 Notwithstanding any other provisions of this Lease, the Tenant shall at all times and from time to time have the right to encumber, pledge or convey all, but not less than all, of its leasehold estate in the Leased Premises, its title to and interest in the Improvements and

its title and interest in the Building Service Equipment by way of a bona fide Leasehold Mortgage (and, where appropriate, by grant of a security interest under the Uniform Commercial Code) to secure the payment of any loan or loans obtained by Tenant; for the property, provided, however, that Tenant shall give prior written notice to Landlord of its intent to exercise such rights hereunder, including in such notice the name(s) and address(es) of such Leasehold Mortgagee and any other information regarding Leasehold Mortgage and mortgage documents which Landlord may require.

23.2 (a) If a Leasehold Mortgagee, through the operation of its contract to finance or refinance the Improvements and the Building Service Equipment, or by foreclosure, acquires Tenant's entire interest in the Property prior to the completion of the Improvements and the Building Service Equipment, and the Leasehold Mortgagee has complied with the provisions of Section 23.3(a) hereof, the Leasehold Mortgagee shall have the following options:

- (i) complete construction of the Improvements in accordance with the approved Final Working Drawings and Specifications and this Lease, and in all respects comply with the provisions of this Lease;

- (ii) with the prior written consent of Landlord, sell, assign or transfer Tenant's entire interests in the Property to a purchaser,

assignee or transferee acceptable to Landlord who shall expressly assume all of the covenants, agreements and obligations of the Tenant under this Lease in respect of the Property by written instrument satisfactory to the Landlord and recorded forthwith in the Suffolk County Registry of Deeds, or

(iii) reconvey the entire interests of Tenant in the Property to the Landlord.

(b) To obtain the benefit of one of the options under paragraph 23.2(a), the Leasehold Mortgagee must notify Landlord of the option it elects within sixty (60) days after it shall acquire title to or possession of the Property (whichever shall last occur). In the event that a Leasehold Mortgagee elects to complete construction pursuant to subparagraph (a)(i), above, or sells, assigns or transfers pursuant to subparagraph (a)(ii), above, the Landlord shall extend the time limits set forth in this Lease only as shall be reasonably necessary to complete the Improvements and the Building Service Equipment and, upon such completion, the Leasehold Mortgagee or purchaser of the leasehold estate, as the case may be, shall be entitled to the same rights, benefits and privileges available to Tenant hereunder,

including Tenant's right to a Certificate of Completion pursuant to Section 7.12.

23.3 If a Leasehold Mortgagee shall, by written notice to the Landlord given within thirty (30) days of the execution, delivery and recording of a Leasehold Mortgage, notify Landlord thereof of the name and address of the Leasehold Mortgagee for notice purposes, and of the recording reference of its Leasehold Mortgage, and with such notice shall furnish to the Landlord a true copy of its Leasehold Mortgage, Landlord agrees that so long as such Leasehold Mortgage shall remain unsatisfied of record, or until written notice of satisfaction thereof is given by the Leasehold Mortgagee to Landlord (whichever shall first occur) the following provisions shall apply:

(a) Landlord shall, promptly upon receipt of a communication purporting to constitute the notice provided for in the foregoing provisions of this Section 23.3, either provide the Leasehold Mortgagee submitting such communication with a written confirmation of the receipt of such communication and that the same constitutes the notice provided for in the foregoing provisions of this Section 23.3, or notify the Tenant in writing and such Leasehold Mortgagee of the rejection of such communication as not conforming with the foregoing provisions of this Section 23.3 and specifying the basis for such rejection. Each Leasehold Mortgagee which notifies

Landlord in conformity with the foregoing provisions of this Section 23.3 is referred to in the following provisions of this Section 23.3 as a "Qualifying Leasehold Mortgagee";

(b) In the event of any assignment of a Leasehold Mortgage or in the event of a change of address for notice purposes of a Qualifying Leasehold Mortgagee or of an assignee of any such Leasehold Mortgagee, notice of the new name and address for notice purposes shall be provided to Landlord as a condition to the continued availability of the rights hereunder of a Qualifying Leasehold Mortgagee;

(c) There shall be no cancellation, surrender, termination or modification of this Lease by joint action of Landlord and Tenant, or termination of this Lease by unilateral action of Tenant under the provisions of this Lease permitting such termination by Tenant, without in each case first securing the prior written consent of each Qualifying Leasehold Mortgagee;

(d) The Landlord shall, upon giving Tenant any notice of default, simultaneously give a copy of such notice to each Qualifying Leasehold Mortgagee and no notice of default given to Tenant shall be effective until a copy thereof has been given to each Qualifying Leasehold Mortgagee. Wherever in this Lease notice is to be given to a Qualifying Leasehold Mortgagee at its

address specified in accordance with the foregoing provisions of this Section 23.3 and otherwise complying with the terms of the notice provisions of this Lease, such notice shall conclusively be treated as having been "given" within the meaning of the respective provisions calling for notice to a Qualifying Leasehold Mortgagee;

(e) Each Qualifying Leasehold Mortgagee shall have the same period, after such notice has been given to it, for remedying any default or causing the same to be remedied, as is given Tenant after the giving of such notice to Tenant, plus (x) in the case of a default in the payment of the Base Rent or the Percentage Rent, an additional period of ten (10) days, and (y) in the case of any other default, an additional period of thirty (30) days, and if such default cannot with due diligence be cured within such additional thirty (30) day period, an additional time thereafter, provided that such cure is initiated during such additional thirty (30) day period and thereafter the curing of the same is prosecuted with diligence, and Landlord shall accept such performance by a Qualifying Leasehold Mortgagee as if performed by Tenant;

(f) Upon the happening of any of the Events of Default set forth in subsections (d), (e), (f), (g) or (h) of Section 18.2 of this Lease, the Landlord shall

give notice thereof to each of the Qualifying Leasehold Mortgagees promptly after Landlord shall have knowledge of the happening of such event;

(g) In the case of any default by Tenant which is not susceptible of being cured by any Qualifying Leasehold Mortgagee, Landlord agrees that it will take no action to effect a termination of this Lease by reason of such default without first giving to each Qualifying Leasehold Mortgagee a reasonable period of time after notice under either (d) or (f), above, to obtain possession of the Leased Premises and to cure such default, in the case of a default which can be cured upon the obtaining of possession, or to institute foreclosure proceedings and to complete such foreclosure or otherwise to acquire the interest of Tenant under this Lease with diligence and without delay, in the case of a default which cannot be cured by any Qualifying Leasehold Mortgagee; provided, however, (i) that the period for obtaining possession or acquiring the interests of Tenant by foreclosure or otherwise, as the case may be, shall be extended for the period during which such action is enjoined or stayed, (ii) that such Qualifying Leasehold Mortgagee shall pay or cause to be paid the Base Rent, Percentage Rent and other monetary obligations of Tenant under this Lease as the same become due, and to continue good faith efforts to perform all of Tenant's

other obligations under this Lease which are susceptible of being performed by such Qualifying Leasehold Mortgagee, during the period of such forbearance, and (iii) that nothing herein shall require any Qualifying Leasehold Mortgagee to begin or continue such possession or foreclosure proceedings or preclude Landlord from exercising (subject to the provisions of this Article 23) any rights or remedies under this Lease with respect to any other defaults by Tenant during the period of such forbearance;

(h) In the event of a termination of this Lease for any reason other than by expiration of the term, the Qualifying Leasehold Mortgagee holding the senior Leasehold Mortgage shall have the right, in addition to the foregoing rights, to elect to demand a new lease of the Leased Premises, exercisable by notice in writing to the Landlord within sixty (60) days after the giving of notice by Landlord to each Qualifying Leasehold Mortgagee of such termination, for the balance of the term hereof effective as of the date of such termination, at the Base Rent, Percentage Rent and additional rent and upon all of the other terms, provisions, covenants and agreements set forth in this Lease except that Landlord shall not be required to warrant and defend the right of possession of the Tenant under such new lease against the Tenant herein or anyone claiming by, through or under the Tenant;

provided that, concurrently with the delivery of such notice, the Leasehold Mortgagee shall have performed and thereafter shall continue to perform all obligations of Tenant hereunder capable of being performed by such Qualifying Leasehold Mortgagee which would have accrued hereunder had this Lease remained in force until the time of such delivery. The Parties shall act promptly after such notice and performance to execute such new lease. Any such new lease shall be superior and not subordinate to any mortgage upon Landlord's fee interest in the Leased Premises hereafter given; and any such new lease may, at the option of such Qualifying Leasehold Mortgagee, name as tenant a nominee of such Qualifying Leasehold Mortgagee. If as a result of any such termination the Landlord shall succeed to the interests of Tenant under any sublease of the Leased Premises or any portion thereof, Landlord shall execute and deliver an assignment of all such interests to the tenant under the new lease simultaneously with the delivery of such new lease;

(i) The Leasehold Mortgagee shall be given notice of any arbitration of this Lease, and shall have the right to intervene therein and be made a party to such proceedings, and the parties hereto do hereby consent to such intervention.

23.4 The term "Leasehold Mortgage" as used in this Article means one or more Leasehold Mortgages to an Institution which constitute from time to time a first or second lien on Tenant's entire interest in the Property. The terms of any Leasehold Mortgage may be as the Tenant may negotiate with any Leasehold Mortgagee. The rights provided in this Article 23 may be exercised only by such Institution as is a lienholder in such first or second position which becomes a Qualifying Leasehold Mortgagee and not by any other subordinate Leasehold Mortgagees, all such other subordinate Leasehold Mortgagees being hereby expressly prohibited. A deed of trust or other form of security deed shall be treated as the equivalent of a mortgage.

Tenant shall not grant a Leasehold Mortgage securing financing in excess of Total Project Costs unless the following terms are satisfied with respect to the financing secured by such Leasehold Mortgage:

1. The amount of financing shall be such that the Net Cash Flow for the most recently-ended Lease Year shall be equal to or greater than 115% of all annual payments, including debt service, due the Institution on account of such financing. For the purposes of this provision, Net Cash Flow shall be computed without the Allowed Deduction specified in Section 3.1C.(3)(c);

2. The "loan/value ratio" shall not exceed 0.80. For these purposes "loan/value ratio" means a fraction, the numerator of which is the amount of such financing and the denominator of which is the then fair market value of the Tenant's leasehold interest in the Property (determined by an independent MAI appraiser selected by Tenant and approved by Landlord);

3. The maturity of any such financing shall not be less than ten (10) years and annual payments, including debt service, due the Institution on account of such financing shall be constant except that a "balloon" payment may be provided at the end of the term of such financing;

4. The documentation, terms and conditions of the proposed Leasehold Mortgage must be reasonably satisfactory to counsel for the Landlord and be consistent with the provisions of this Lease;

5. The Tenant shall reimburse the Landlord for all reasonable costs and expenses incurred by Landlord incident to responding to any approval requested for any such Leasehold Mortgage financing, including the cost of any appraiser or expert hired by Landlord with respect thereto. Such costs and expenses shall be reimbursed to Landlord upon request and shall be promptly paid, whether or not the Landlord shall approve any proposed financing; and

23.5 Notwithstanding anything else herein contained to the contrary, if the holder (who is also a Qualifying Leasehold Mortgagee) of any Leasehold Mortgage expressly permitted hereby and constituting a First Lien on Tenant's leasehold estate shall, in good faith and without intent to deprive the Landlord of its benefits hereunder, foreclose such Leasehold Mortgage and acquire such leasehold estate or in good faith accept a transfer of the Property from Tenant in lieu of foreclosure, or in good faith acquire such leasehold estate pursuant to the provisions of Section 23.3(h), the Tenant shall not be obligated to pay Percentage Rent for a period of three (3) years from the date of acquisition of the Leasehold Estate by the holder of any Leasehold Mortgage.

ARTICLE 24

HOLDING OVER

24.1 This Lease shall terminate without further notice at the expiration of the term, unless extended as herein

expressly provided. Any holding over by Tenant after expiration shall not constitute a renewal or extension or give Tenant any rights in or to the Property except as expressly provided in this Lease.

ARTICLE 25

NOTICES

25.1 Any notice required or desired to be given pursuant to this Lease shall be in writing with copies directed as indicated below and shall be personally service, or, in lieu of personal service, by depositing same in the United States mail, postage prepaid, certified or registered mail. If such notice shall be addressed to Landlord, the address of Landlord is:

Boston Redevelopment Authority
One City Hall Square
Boston, Massachusetts 02201
ATTENTION: DIRECTOR

h a duplicate copy to:

Boston Redevelopment Authority
One City Hall Square
Boston, Massachusetts 02201
ATTENTION: CHIEF GENERAL COUNSEL

if addressed to Tenant, the address of Tenant is:

Navy Yard Plaza Development Associates, Inc.
c/o Kenney Development Company, Inc.
120 Fulton Street
Boston, Massachusetts 02109

with a duplicate copy to:

J. David Moran, Esquire
Segal, Moran & Feinberg
210 Commercial Street
Boston, Massachusetts 02109

Either Landlord or Tenant may change its respective address by giving written notice to the other in accordance with the provisions of this paragraph.

Any requests for approvals made by Landlord to Tenant where such approvals shall be deemed granted after a period of non-reply by Landlord shall, as a condition to the effectiveness thereof, be prefaced with the following language printed in capital letters in bold face type:

"NOTICE

THIS REQUEST FOR APPROVAL REQUIRES IMMEDIATE REPLY

FAILURE TO RESPOND WITHIN _____ DAYS

SHALL RESULT IN AUTOMATIC APPROVAL"

ARTICLE 26

QUIET ENJOYMENT; ENCROACHMENTS AND VAULTS;

LIMITATION OF LIABILITY

26.1 The Landlord covenants that Tenant, upon paying the annual rent and all other charges herein provided for, and observing and keeping the covenants, agreements and conditions of this Lease on its part to be kept, shall lawfully and quietly hold, occupy and enjoy the Leased

Premises during the term of this Lease, without hindrance or molestation of the Landlord, or any person or persons claiming under or through the Landlord, subject to the Permitted Exceptions and any other matters expressly hereinabove set forth; provided, however, that this covenant shall not extend to any vault, subway entrance, sub-sidewalk, sub-alley, or sub-street, if any, now or hereafter used incident to or as an appurtenance to the Leased Premises, nor to any encroachments of the Improvements on premises other than the Leased Premises, including, but not limited to, the encroachment of any present or future building, wall or structure, either on the Leased Premises or on any property adjacent thereto, and the Landlord shall not be liable for any such encroachments, but the Tenant agrees to indemnify and save harmless the Landlord during the term of this Lease from and against any and all liability, penalty, damages, expense and judgment, whatsoever, on account of the location of any building, wall, structure or other encroachment on or partly on the Leased Premises, or on or partly on any property adjacent thereto.

Neither Landlord nor Tenant (and if Tenant is a partnership, joint venture or trust, no partner general or limited, venturer, trustee or beneficiary thereof) shall be personally liable for any of their respective obligations hereunder, and in the event of a claim by either party against the other, the claimant shall look solely to the

interests of Landlord or Tenant in the Property, as the case may be, and not to any other assets for satisfaction of such claim.

The Landlord named herein, and its respective successors in title to the Landlord's interest under this Lease, shall be liable only for breaches occurring during its or their respective ownership of such Landlord's interest hereunder, and the Landlord shall never be liable to the Tenant for consequential damages arising out of defaults by Landlord hereunder by Landlord on the basis of facts actually known to it at the time of any such default by Landlord.

26.2 It is expressly understood and agreed that all vaults now or hereafter built, projecting beyond the building line of the Leased Premises, are not included within the premises demised by this Lease, but the Tenant may occupy and use the same during the term of this Lease, subject to such laws, rules and regulations as may be imposed by the appropriate municipal departments with respect thereto. No revocation on the part of any municipal department or authority of the license to maintain and use such vaults shall in any way effect this Lease or the amount of the Base Rent, Percentage Rent or any other charges payable by the Tenant hereunder. If any such license so to maintain and use such vaults shall be revoked, Tenant will, at its sole cost and expense, do and

perform all such work as may be necessary to comply with any order revoking the same.

ARTICLE 27

ESTOPPEL CERTIFICATE

27.1 The Tenant and the Landlord agree at any time, and from time to time, upon not less than ten (10) days' prior written notice by the one of them requesting the same, to execute, acknowledge and deliver to the other party and to a Qualified Leasehold Mortgagee which so requests, a statement in writing, certifying that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified, and stating the modifications), and the dates to which the annual rent and other charges have been paid in advance, if any, and stating whether or not, to the best knowledge of the party executing such statement, there are defaults under this Lease, and, if so, specifying each such default, it being intended that any such statement delivered pursuant to this Article may be relied upon by any prospective purchaser or assignee of the fee or leasehold or any Leasehold Mortgagee or assignee of any Leasehold Mortgagee.

ARTICLE 28

REMEDIES CUMULATIVE

28.1 The specified remedies to which the Landlord or Tenant may resort under the terms of this Lease are cumulative and are not intended to be exclusive of any other remedies or means of redress to which the Landlord or Tenant may be lawfully entitled in case of any breach or threatened breach by the Landlord or Tenant, as the case may be, of any provision of this Lease. The failure of the Landlord or Tenant to insist in any one or more cases upon the strict performance of any of the covenants of this Lease, or to exercise any option herein contained, shall not be construed as a waiver or a relinquishment for the future of such covenant or option.

28.2 A receipt by the Landlord of rents, with knowledge of the breach of any covenant hereof, shall not be a waiver of such breach, and no waiver by the Landlord of any provision of this Lease shall be effective unless in writing and signed by the Landlord. Acceptance by Landlord (including, without limitation, of any draft remitting the same) of payments in amounts less than due the Landlord shall be treated as payments on account to the extent thereof, notwithstanding any statement of endorsement on or accompanying the same; and the acceptance by the Landlord from any person other than the Tenant on account of the

Tenant's obligations shall not be treated as a waiver by the Landlord of any right the Landlord may have on account of an improper transfer of the Tenant's interest under this Lease.

28.3 In addition to the other remedies provided in this Lease, the Landlord or the Tenant shall be entitled to restraint of the other, as the case may be, by injunction of the violation or attempted or threatened violation, of any of the covenants, conditions and provisions of this Lease.

ARTICLE 29

SURRENDER NOT A MERGER

29.1 The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work a merger and shall, at the option of Landlord, operate as an assignment to Landlord of any and/or all subleases of subtenants and no such surrender or mutual cancellation shall be effective without the written consent of any Qualifying Leasehold Mortgage.

ARTICLE 30

ATTORNEYS' FEES AND OTHER COSTS

30.1 In the event either party shall bring any action or legal proceedings for damages for an alleged breach of

any provision of this Lease, or to enforce, protect, determine or establish any term or covenant of this Lease or right of such party, or in the case of Landlord to recover rent or to terminate the tenancy of the Leased Premises, and if, in such event, the party bringing the action or proceeding shall prevail (by settlement or otherwise) or substantially prevail in any such action or legal proceeding, then the prevailing party shall be entitled to recover from the other party as a part of such action or proceedings, or in a separate action brought for that purpose, reasonable attorneys' fees and court costs.

30.2 It is anticipated that, from time to time during the term of this Lease, the Landlord shall require the advice of counsel or other professional consultants in the examination of requests submitted by the Tenant, review and approval of documentation required from time to time to be provided by the Tenant to the Landlord under this Lease, and otherwise in the review of the exercise by the Tenant of any of its rights hereunder.

Accordingly, without limiting the Landlord's right to recover the reasonable fees and expenses of counsel incident to enforcing its obligations on default or breach of condition by the Tenant, the Tenant agrees to pay the Landlord reasonable fees and expenses of counsel and other professional consultants (but only to the extent not on the full time payroll of Landlord) incurred by the Landlord on account of services rendered incident to disposition of

requests made by the Tenant under this Lease, including, without limitation, review and preparation of documentation required incident thereto, or in services rendered to the Landlord incident to the exercise by the Tenant of its rights hereunder which requires review or preparation of documentation, such as review and preparation of documentation in compliance with the Tenant's request that the Landlord enter into an agreement with a Leasehold Mortgagee of the type referred to in Article 23 hereof, all to the end that the rent paid by the Tenant shall be absolutely net to the Landlord; and the Landlord shall have the right to treat any such fees as additional rent, for the recovery of which the Landlord shall have all the remedies provided herein and such fees shall be an Allowed Deduction pursuant to Article 3, Section 3.1(c)(3); but excluding from the operation of the foregoing provisions of this paragraph all such fees and expenses incurred incident to the Landlord's consideration of submissions or requests for approval, consent or the like where, under the terms of this Lease such submission, consent, approval or the like is required as a condition to an act by Tenant.

ARTICLE 31

DEFINITIONS

31.1 Terms defined elsewhere in this Lease shall have the meanings ascribed to them. In addition, the terms

defined below shall have the meanings ascribed to them wherever such terms shall appear in the Lease, unless the context otherwise requires.

31.2 The term "Landlord" shall be limited to mean and include only the owner or owners at the time of the fee of the Leased Premises and, in the event of any transfer or transfers of title to the same, the Landlord herein named (and, in case of any subsequent transfers and conveyances, then the grantor) shall be automatically freed and released from and after the date of such transfer and conveyance of all liability as respects the performance of any covenants or obligations on the part of Landlord contained in this Lease thereafter to be performed, it being intended hereby that the covenants and obligations contained in this Lease on the part of the Landlord shall, subject as aforesaid, be binding on Landlord, its successors and assigns, only during and in respect of their respective successive periods of ownership of the fee of the Leased Premises.

31.3 The term "Occupancy Tenant" shall mean any tenant, subtenant, licensee, concessionaire or other party of any type entitled to the use or occupancy of space in or on the Improvements or the Property, under a sublease from Tenant, other than Tenant holding under this Lease; the term "sublease" shall mean any lease or other agreement, written or oral, for the use or occupancy of any such space entered into between Tenant and an Occupancy Tenant. These terms shall refer to any such Occupancy Tenant or sublease

whether such Occupancy Tenant of sublease enjoys a position superior or subordinate to Tenant or this Lease.

31.4 The term "person" shall include an individual, corporation, partnership, unincorporated organization or government, or any agency or political subdivision thereof and any other entity, whether or not incorporated. The use of the neuter gender shall include the masculine and the feminine and the use of the singular shall include the plural.

31.5 The terms "rent" or "rents" shall mean the Base Rent, monthly reserves, Percentage Rent and all amounts specified in this Lease and additional rent.

31.6 The term "Institution" shall mean any of the following:

(a) a bank, a wholly-owned subsidiary of a bank, insurance company, savings and loan association, trust company or a corporation, trust or association qualifying as a real estate investment trust under the provisions of Section 856 of the Internal Revenue Code, as amended (or like future provisions of such Code), chartered under the laws of the United States of America or any state thereof, and with a principal place of business in one of such states and combined capital and surplus account (or, in the case of a mutual company, the equivalent thereof) of not less than \$100,000,000;

(b) an educational institution with a capital endowment of not less than \$100,000,000;

(c) a pension fund established by and for any business corporation or corporations, or by and for any group of employees of a governmental body or of a religious or educational institution or for any trade union, and, in each such case, having a net worth, determined in accordance with recognized accounting practices, of not less than \$100,000,000.

31.7 The term "Leasehold Mortgage" shall mean any mortgage on Tenant's estate created under this Lease which is permitted by the terms of Article 23. The term "Leasehold Mortgagee" shall mean the holder of any Leasehold Mortgage.

31.8 The expression "movable trade fixtures, machinery and equipment", or words of similar import, shall include all furnishings, chattels, personal property and equipment, and all additions, replacements or articles in substitution thereof, of every kind and description which are not now or hereafter affixed and attached to the Improvements and which are not used, or procured for use, in connection with the operation of the Improvements, owned by others than Tenant, and all furnishings, chattels, personal property and equipment and all additions, replacements or articles in substitution thereof, of every kind and description which are owned by occupants of space in the Improvements or the Leased Premises, whether or not so affixed and

attached, so long as the same are readily movable without material damage or injury to the Improvements.

31.9 The term "Plan" shall mean the Charlestown Urban Renewal Plan as in effect on January 6, 1983.

31.10 The term "Total Project Costs" shall mean all bona fide costs incurred in construction of the Improvements, the cost of Building Service Equipment, on-going tenant fit-up and off-site improvements relating to or installed in connection with the Improvements and the changes, alterations and restoration of the same, and shall include without limitation the following items: (i) amounts paid by Tenant to the contractors under construction contracts; (ii) amounts paid to the Architect and to architectural and engineering consultants; (iii) amounts paid for borings, surveys, tests, historical and environmental investigations; (iv) costs of insurance during construction including builders risk, public liability and workers' compensation; (v) costs of relocation of existing structures and facilities necessitated by construction and all other costs of site preparation; (vi) Base Rent, Impositions and all interest paid during construction; (vii) costs of fees, permits, licenses; (viii) a developer's fee for services and overhead not to exceed \$ 450,000.00 (ix) such amounts, as Tenant shall justify to Landlord's reasonable satisfaction as having been incurred by Tenant on account of operating losses of the Property and Occupancy Tenant inducement

costs (collectively "operating losses", but not in excess of the amount of operating losses and Occupancy Tenant inducement costs incurred during the period ending 36 months after the issuance of certificates of occupancy for the office portion of the Improvements or for the retail portion of the Improvements, whichever occurs later, provided if during the first 12 months of the 36 month period, operating losses exceed \$600,000, then the amount allowed under this clause (ix) shall be limited to operating losses incurred during the first 12 months of such 36 month period, and if operating losses incurred during such 12 month period are \$600,000 or less than the amount allowed under this clause (ix) for operating losses incurred during such entire 36 month period shall not exceed \$600,000; (x) costs of legal, accounting, planning, appraisal and other consulting services, placement fees, commissions, recording fees, title insurance premiums and charges and other costs and charges incurred in connection with the acquisition of the leasehold interest created by this Lease and the construction and financing of the Improvements and such off-site improvements.

31.11 The term "Architect" shall mean only the architectural firm of the Boston Architectural Team, or such substitute therefor as shall be approved by Landlord.

31.12 The term "General Contractor" shall mean only the firm of Macomber Construction Co., or such substitute therefor as shall be approved by Landlord.

31.13 The term "term" or "term of this Lease" or "Lease term" shall include properly exercised extensions thereof allowed hereby. Any reference to the "termination of this Lease" shall be deemed to include any termination hereof by expiration, default or otherwise.

31.14 The term "Depository" shall mean a bank or trust company chartered under the laws of the United States of America or the Commonwealth of Massachusetts with a combined capital and surplus account of not less \$50,000,000, which shall be selected by the mutual agreement of the Landlord and the Tenant and, in accordance with such terms as the parties may agree and upon provision for indemnity suitable to it, shall agree to act as depository of funds for the purposes provided in this Lease. The Depository shall be under no obligation to cash or collect interest coupons on any securities deposited hereunder issued in coupon form, but shall hold such coupons subject to the order of the Tenant and the provisions of this Lease under which such securities were deposited. Cash deposited with the Depository shall be invested by the Depository in U.S. Treasury bills or notes of such other form of investment as shall be mutually acceptable to Landlord and Tenant and all amounts earned thereon shall be considered part of, and devoted to the purpose of, the deposit with any balance remaining after such purpose has been satisfied to Tenant.

31.15 The term "Lease Year" shall mean a calendar year commencing January 1 and ending on December 31 next following, except that the first Lease Year shall commence on the Lease Commencement Date and shall end on December 31 next following the Lease Commencement Date, and the last Lease Year shall end on the date the term of this Lease terminates or expires.

31.16 The term "Leased Premises" shall mean the definition as set forth in Article 1, Section 1.2.

31.17 The term "Improvements" shall mean the definition as set forth in Article 1, Section 1.3.

31.18 The term "Building Service Equipment" shall mean the definition as set forth in Article 1, Section 1.4.

31.19 The term "Net Refinancing Proceeds" shall mean the amount by which the proceeds of refinancing (reduced by the reasonable expenses incurred by Tenant in connection with the refinancing) exceed the greater of Total Project Cost or the then outstanding principal balance of the existing Financing.

31.20 The term "Financing" shall mean the original principal amount of funds provided by an Institution either (i) entirely as debt secured by a Leasehold Mortgage on the Property, or (ii) partly as debt so secured and partly as an equity investment in the Property.

31.21 The term "Refinancing" means replacing all or a portion of the then existing Financing with new Financing, except that Refinancing shall not include the

replacement of the initial construction financing for the Improvements by the initial permanent financing, except to the extent said amount exceeds total project costs.

31.22 The term "Final Working Drawings and Specifications" means the plans and specifications approved by Landlord as part of the Contract Documents, as the same may thereafter be amended by Tenant with the approval of Landlord as set forth in Article 7, Section 7.4 (d) except to the extent that said permanent financing exceeds total project costs and any operating deficits.

ARTICLE 32

NON-DISCRIMINATION; EMPLOYMENT; NO CONFLICTS

32.1 Tenant, for itself and all successors and assigns, agrees that in the redevelopment of the Leased Premises and in all construction activity undertaken with respect thereto:

(a) Tenant will not discriminate against any employee or applicant for employment because of race, color, sex, religion, age or national origin. Tenant shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment without regard to

race, color, sex, religion, age or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or compensation and selection for training, including apprenticeship. Tenant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(b) Tenant will, in all solicitations or advertisements for employees placed by or on behalf of Tenant, state all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age or national origin.

(c) Tenant will send to each labor union or representative of workers with which Tenant has a collective bargaining agreement or other contract or understanding, a notice to be provided, advising the said labor union or workers' representative of Tenant's commitments under Section 202 of Executive Order #11246 of September 24, 1965, as amended by Executive Order #11375 of October 13, 1967, and shall post copies of the notice in conspicuous places available to employees and applicants for employment..

(d) Tenant will comply with all provisions of Executive Order #11246 of September 24, 1965, as amended by Executive Order #11375 of October 13, 1967,

and the rules, regulations and relevant orders of the Secretary of Labor.

(e) Tenant will furnish all information and reports required by Executive Order #11246 of September 24, 1965, as amended by Executive Order #11375 of October 13, 1967, and by the rules, regulations and orders of the Secretary of Labor pursuant thereto, and will permit access to Tenant's books, records and accounts by the Landlord, the Secretary of Housing and Urban Development, and the Secretary of Labor, for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(f) In the event of Tenant's noncompliance with the nondiscrimination clauses of this Section 32.1 or with any of the said rules, regulations or orders, upon written notice to Tenant, and the continuance of such noncompliance for sixty (60) days thereafter, Tenant may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order #11246 of September 24, 1965, as amended by Executive Order #11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order #11246 of September 24, 1965, as amended by Executive Order #11375 of October 13, 1967, or by rules regulations or

orders of the Secretary of Labor, or as otherwise provided by law.

(g) Tenant will include the provisions of paragraph (a) through (g) of this Section 32.1 in every contract or purchase order, and will require the inclusion of these provisions in every subcontract entered into by any of its contractors, unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order #11246 of September 24, 1965, as amended by Executive Order #11375 of October 13, 1967, so that such provisions will be binding upon each such contractor, subcontractor or vendor as the case may be. Tenant will take such action with respect to any construction contract, subcontract or purchase order as the Landlord directs as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Tenant becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Landlord, Tenant may request the United States to enter into such litigation to protect the interest of the United States.

32.2 Tenant, for itself and all successors and assigns, agrees that in the redevelopment of the Leased Premises and in all construction activity undertaken with respect thereto, Tenant shall, prior to the issuance of any

licenses or permit, submit a Residents Construction Employment Plan to the Director setting forth in detail the Tenant's plans to ensure that its Contractor, and those engaged by said Contractor for construction of the Project, on a craft by craft basis, the following standards are met: (1) at least 50 percent of the total employee workerhours in each trade shall be by bona fide Boston residents, (2) at least 25 percent of the total employee workerhours in each trade shall be by minority persons, and (3) at least 10 percent of the total employee workerhours in each trade shall be women. (Workerhours shall include work performed by persons filling apprenticeship and on-the-job training positions.)

Such efforts consist of the following:

(a) Tenant shall incorporate in every general construction contract or construction management agreement an enumeration of the foregoing worker hour goals and shall impose a responsibility upon the contractor to pursue the efforts enumerated in this Section 32.2 and to incorporate such worker hour goals in all subcontracts and impose upon all subcontractors the obligation to pursue such efforts;

(b) Landlord, Tenant, contractor, and every subcontractor shall each designate an individual to serve as affirmative action officer for the purpose of carrying out the efforts to achieve worker hour goals set forth herein;

(c) Contemporaneously with the start of construction, the affirmative action officers and other interested representatives of the Landlord, Tenant, contractor, and each subcontractor then selected shall hold a pre-job conference with appropriate union representatives of the construction trade unions for the purpose of reviewing the worker hour goals applicable to the Improvements and the manning requirements for construction activity over the life of the construction period;

(d) Each request for qualified construction workers made by any person involved in the construction of the Improvements to a union hiring hall or business agency shall contain a recitation of such worker hour goals and a request that qualified referees for construction positions on the Improvements be selected in the same proportion as such goals; provided, however, that if at the time of any such manning request the requesting party's workforce composition falls short of any one or more of such goals, such manning request shall seek qualified referrals in such proportion among such categories as would be necessary to more fully achieve such goals. In the event that the union hiring hall or business agent to which or to whom such a manning request has been submitted fails to comply with such request, the affirmative action officer of such

requesting party shall seek to verify that insufficient workers in the categories specified in such request are then shown on the unemployed list maintained by such union hiring hall or business agent by seeking to obtain an affidavit from the union hiring hall representative or business agent to such effect. Copies of any affidavit so obtained shall be forwarded to the affirmative action officer of the Landlord.

(e) All persons applying directly to the contractor, or subcontractor for employment in construction on the project who are not employed by the party to whom application is made will be referred to the affirmative action officer of the Landlord and a written record of such referral shall be made, a copy of which shall be sent to such officer; and

(f) Tenant, contractor, and every subcontractor shall each maintain records reasonably necessary to ascertain compliance with the requirements of this Section for at least one year after the issuance of the Certificate of Completion and will make the same available for inspection by the Landlord upon reasonable notice.

32.3 Tenant, for itself and all successors and assigns, further agrees that in the redevelopment of the Leased Premises, Tenant shall comply and shall require its general contractor to comply with the Mayor's Executive

Order "Encouraging Minority Business Enterprise" dated June 28, 1978 effective July 1, 1978.

32.4 Tenant, for itself and all successors and assigns, further agrees that in the redevelopment of the Leased Premises, Tenant shall comply with the provisions of the First Source Agreement hereto as Exhibit "G" relating to employment positions for city residents.

32.5 No member of the Congress of the United States of America shall be admitted to any share or part thereof, or to any benefit to arise from this Lease. No member, official or employee of the Landlord shall have any personal interest, direct or indirect, in this Lease, nor shall any such member, official or employee participate in any decision relating to this Lease which affects his personal interest or the interests of any corporation, partnership or association which he directly or indirectly holds an interest as that term is defined in M.G.L. c.268A.

32.6 No member, official or employee of the Landlord shall be personally liable to Tenant in the event of any default or breach by the Landlord or for any amount which may become due to Tenant or on any obligations under the terms of this Lease.

ARTICLE 33

PARKING

33.1 Landlord acknowledges that the structure in the Charlestown Navy Yard known as Building 199 is being

developed as a parking facility. Upon completion of said parking facility, a minimum of five hundred (500) spaces will be available to the occupants of the Charlestown Navy Yard, except for the occupants of Building 149. Landlord pledges, subject to the provisions contained in the Ground Lease dated May 23, 1985 between the Boston Redevelopment Authority and Navy Yard Parking Associates/LNR Venture, to exercise its best efforts to assist the Tenant in obtaining access to parking spaces to meet its reasonable needs. In addition, temporary parking will be made available to Tenant by Landlord to meet its reasonable needs during construction of Improvements and when Improvements are completed until Building 199 is available.

ARTICLE 34

GENERAL

34.1 The captions used in this Lease are for the purpose of convenience only and shall not be construed to define, limit or extend the meaning of any part of this Lease.

34.2 Any executed copy of this Lease shall be deemed an original for all purposes.

34.3 In case any one or more of the provisions contained herein, except for the payment of rent, shall for

any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Lease, but this Lease shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein. This Lease shall be construed and enforced in accordance with the laws of the Commonwealth of Massachusetts.

34.4 The language in all parts of this Lease shall in cases be construed as a whole according to its fair meaning, and not strictly for or against either Landlord or Tenant. When the context of this Lease requires, the neuter gender includes the masculine, the feminine, a partnership or corporation or joint venture, and the singular includes the plural.

34.5 Each term and provision of this Lease performable by Tenant shall be construed to be both a covenant and a condition conferring upon Landlord, in the event of breach of any such term or condition, the right to terminate this Lease in accordance with and subject to the provisions of Article 18. The termination or expiration of this Lease shall not terminate obligations of the Tenant which remain unperformed at such time (for example, but without limitation, Tenant's obligation under Section 3.1E, hereof).

34.6 The covenants and agreements contained in this Lease shall be binding upon and shall inure to the benefit

of the parties hereto and their respective successors and assigns (to the extent this Lease is assignable under the terms hereof). The Landlord and Tenant each warrant and represent to the other that corporate or other action has been taken by the warranting party to authorize the execution and delivery of this Lease and that this Lease is valid and binding upon it in accordance with its terms.

34.7 The waiver by Landlord or Tenant or any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained.

34.8 Each party hereto agrees to act reasonably and in good faith with respect to the performance and fulfillment of the terms of each and every covenant and condition contained in this Lease, and with respect to the exercise of each and every right reserved herein, and wherever in this Lease the consent, approval or exercise of judgment or discretion of either party is required or requested, such consent or approval shall not be withheld or delayed unreasonably and such judgment or discretion shall not be exercised arbitrarily, but shall be exercised reasonably and promptly; provided, however, that this Section shall not apply to the exercise of the Landlord's rights under provisions of this Lease relating to its approval of matters involving signs and design and appearance of the Leased Premises and the Improvements, as to all of which

Landlord's approvals shall be given or withheld in its sole discretion. The provision in the preceding sentence shall only be applicable, however, during the Landlord's ownership (or ownership by a successor governmental agency having urban planning responsibility) of the Leased Premises, but in no event shall this limitation be construed in any case as a contractual limitation on the exercise by the Landlord (or such successor agency) of the regulatory powers conferred upon the Landlord (or such successor agency) by any provision of general or special law now in effect or hereafter enacted.

34.9 Where interest is provided to be paid hereunder, the rate therefor, on an annualized basis, shall be computed quarterly at the base rate (or its reasonable equivalent) from time to time charged by the First National Bank of Boston, but in no event more than the amount, if any, which would violate applicable usury prohibitions.

34.10 The Landlord hereby agrees that it shall provide to the Tenant not less than thirty (30) days prior written notice with respect to any voluntary transfer or voluntary disposition of the Landlord's interest in the Leased Premises, provided, however, that failure to give such notice shall not affect the validity of any transfer or disposition of the Landlord's interest.

34.11 In recognition of the importance to the Landlord of the maintenance, management and operation of the Property in a first-class manner consistent with that

accorded like properties in the City of Boston, the Tenant agrees to have under written contract at all times a real estate management firm with recognized experience in the management of commercial property of type and use similar to the Leased Premises to provide management services customary for premises of the type, use and location of the Leased Premises.

34.12 It is hereby mutually agreed that between Landlord and Tenant that Landlord shall not, as the result of the rights granted in this Lease to receive Percentage Rent or any other rights granted herein to Landlord, be deemed or considered as co-owner, co-partner or co-venturer with Tenant in or with respect to the Leased Premises or the Property or with respect to any obligation of the Tenant under any sublease of any other contract, agreement or obligation in respect of the Leased Premises or the Property.

ARTICLE 35

INTEGRATION

35.1 This Lease, and the Exhibits, including Exhibit H, and addenda, if any, attached hereto, constitute the entire agreement between the parties, and there are no agreements or representations between the parties except as

expressed herein. It is the intent of the parties, in the event of inconsistencies among the Documents that the terms of this lease be controlling. No subsequent change or addition to this Lease shall be binding unless in writing and signed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the respective dates below set forth, under seal.

APPROVED AS TO FORM

LANDLORD:
BOSTON REDEVELOPMENT AUTHORITY

CHIEF GENERAL COUNSEL

By: _____
Stephen Coyle, Director

Dated: _____

TENANT:
NAVY YARD PLAZA DEVELOPMENT
ASSOCIATES-33 PARTNERSHIP

Dated: _____

By: _____
Robert T. Kenney,
Its General Partner

EXHIBIT B

PERMITTED TITLE EXCEPTIONS

1. Covenants, agreements, terms and conditions of the Boston Redevelopment Authority Urban Renewal Plan, Charlestown Urban Renewal Act, Project No. Mass R-55 dated February 25, 1965, recorded in Book 8136, Page 704, as amended by instrument dated July 16, 1976, said amendment being approved by the Commonwealth of Massachusetts Executive Office of Communities and Development by letter dated January 28, 1977.
2. Easements, covenants, agreements, restrictions, conditions and rights of re-entry created and referred to in deed from General Services Administration to Boston Redevelopment Authority dated July 7, 1978, recorded in Book 9182, Page 149.
3. Agreement with Boston Redevelopment Authority and Immobiliare New England dated December 7, 1978, as affected by First Amendment to Agreement dated December 7, 1978, between Boston Redevelopment Authority and Immobiliare New England dated July 12, 1984, recorded August 2, 1984 as Instrument No. 31.
4. Order of Taking for sewer easement by the Commonwealth of Massachusetts, Office of Sewerage Commissioners dated June 13, 198 , recorded in Book 2205, Page 340.
5. Liens whether presently existing or hereafter arising on account of any indebtedness or liability to the Commonwealth of Massachusetts arising pursuant to the provisions to M.G.L. Chapter 215. (The Oil and Hazardous Material Release Prevention and Response Act, of 1993.)

EXHIBIT B, Page 2

**The following items affect only the appurtenant to the Leased Premises

1. Terms, provisions, covenants and rights of reverter set forth in the deed Parcel 3 of the B.P.A. Plan from Heritage Conservation and Recreation Service to the Boston Redevelopment Authority dated May 15, 1979, recorded May 25, 1979, with the said Registry of Deeds in Book 9182, Page 134.
2. Terms, provisions, covenants and agreements contained in the Deed of Parcel 2 on the B.P.A. Plan from the General Service Administration to the Boston Redevelopment Authority dated May 21, 1979, recorded May 25, 1979, with said Registry of Deeds (as Instrument #153), in Book 9182, Page 165.
3. Terms and provisions of the following deeds from the Boston Redevelopment Authority:
 - a.) to Jeffrey A. Bullen, Trustee of Shipyard Quarters Trust dated March 24, 1982, recorded in Book 9927, Page 550.
 - b.) to Jeffrey A. Bullen, Trustee of Shipyard Marina Trust dated March 24, 1982, recorded in Book 9928, Page 551.
 - c.) to Immobiliare New England dated July 12, 1984, recorded in Book 11062, Page 003.
 - d.) to Building 42 Associates dated May 24, 1979, recorded in Book 9182, Page 225.
4. Mortgage from Boston Redevelopment Authority to Immobiliare New England in the principal amount of \$1,740,000.00 dated May 24, 1979, recorded in Book 9182, Page 213.
5. Quitclaim Deed of Easement by the United States of America, acting by and through the Regional Director, North Atlantic Region, National Park Service to Boston Redevelopment Authority dated February 8, 1985, recorded in Book 11611, Page 202.
6. Agreement to Exchange Real Property between National Park Service Division of the United States Department of Interior and Boston Redevelopment Authority dated April 2, 1979, recorded in Book 9182, Page 200.
7. Orderst taking by the Commonwealth of Massachusetts, Department of Public Works Layout No. 6492, dated June 30, 1982, recorded in Book 10003, Page 32.

Exhibit C

MANAGEMENT AGREEMENT

BETWEEN

BOSTON REDEVELOPMENT AUTHORITY

AND

FIRST CHARLESTOWN DEVELOPMENT GROUP, INCORPORATED

BUILDINGS 33, 34, 38 AND 39

CHARLESTOWN NAVY YARD

CHARLESTOWN, MASSACHUSETTS

This MANAGEMENT AGREEMENT (this "Agreement") is made this 12 day of JULY, 1984, by and between the Boston Redevelopment Authority, a public body politic and corporate organized under the laws of the Commonwealth of Massachusetts (the "BRA") and First Charlestown Development Group, Incorporated, a Massachusetts corporation (the "Developer").

WITNESSETH

Reference is made to the following facts:

A. Pursuant to a resolution adopted on November 12, 1981, the BRA tentatively designated the Developer as redeveloper of property known respectively as Buildings 33, 34, 38 and 39 in the Charlestown Navy Yard (the "Site", as more particularly described in Exhibit A attached hereto and made a part hereof) which is located in the Charlestown Urban Renewal Area, Project No. Mass. R-55, in the City of Boston. Pursuant to the terms hereof and the terms of the Lease or Leases for the Site as may be determined by the BRA, there will be designed, developed and maintained buildings and other improvements (the "Improvements") upon the Site.

B. The tentative designation was made subject to several preconditions for final designation, one of which was that the Developer and the BRA enter into a management agreement. This Agreement is the management agreement to which the tentative designation refers.

NOW THEREFORE, in consideration of these presents and for other good and valuable consideration, it is hereby agreed as follows:

1. All actions of the Developer and the BRA hereunder shall be subject to and in conformity with the following materials (the "Transaction Documents") which are incorporated herein and made a part hereof and as to which this Agreement shall be supplementary except where a specific conflict exists, in which case this Agreement shall prevail. The Developer shall at all times proceed in accordance with the Transaction Documents and this Agreement. The Transaction Documents consist of: a Resolution of the BRA adopted November 12, 1981, entitled: "TENTATIVE DESIGNATION OF REDEVELOPER BUILDINGS NO. 33, 34, 38, and 39 IN THE CHARLESTOWN URBAN RENEWAL AREA PROJECT NO. MASS. R-55" and the document entitled, "Lease Commencement Summary Agreement Buildings #33, #34, #38 and #39, all of which are attached hereto as Exhibit B.

2. Notwithstanding any inconsistent provisions of the Transaction Documents:

(a) The Site may be developed in two phases, Buildings 33 and 34 ("Phase I") and Buildings 38 and 39 ("Phase II"). Construction of the Improvements will commence for Phase I no later than July 1, 1985 and for Phase II no later than July 1, 1986.

(b) The Developer shall not be required to enter into a Payment In Lieu of Taxes Agreement since the Site when developed in accordance with Phases I and II shall be fully taxable by the City of Boston.

(c) The Developer shall use and devote the Improvements in both phases when completed solely for a mixture of office, retail and commercial space, all in accordance with legal requirements from time to time applicable thereto and for no other purpose. Space at the ground floor level of each building within the respective phases shall be devoted to commercial uses consisting only of active retail sales of products or provision of services to the general public. Consistent therewith, the Developer shall submit to the BRA for approval no later than May 31, 1985 a plan (the "Leasing Plan") for the leasing of space in the ground floor level of each of the buildings. Such Leasing Plan shall set forth in detail the nature of the particular retail uses proposed, the general area in the Improvements which each use shall occupy and such other information as the BRA may require. In any event the BRA will take into consideration when reviewing the Leasing Plan the Developer's desire to attract existing businesses in the Charlestown community to the Site.

(d) The BRA acknowledges that the structure known as Building 199 in the Charlestown Navy Yard is proposed to be developed as a parking facility by another redeveloper. Such facility, when and if completed, will contain at least five hundred (500) spaces which will be available for use by persons other than the tenants of Building 149 and employees, visitors and agents of said tenants. Of the five hundred (500) spaces, the Developer will be entitled to its pro rata share of such spaces based upon the gross square footage of the Improvements on the Site, subject to the parking changes established by the owner or operator of Building 199. In addition, temporary parking will be made available to the Developer by the BRA to meet its reasonable needs during the construction of both phases, and when the respective phases are completed and before Building 199 is available the BRA will make available approximately one hundred and twenty-four (124) spaces for Phase I and two hundred and twenty-four (224) for Phase II.

3. The Developer agrees no later than May 31, 1985 for Phase I and May 31, 1986 for Phase II to perform all of its obligations under this Agreement, in regard to the respective phases and to satisfy all conditions precedent to the execution of the Lease or Leases contemplated by the Transaction Documents and this Agreement. The BRA upon determining that the Developer has so performed and satisfied such conditions precedent, shall make a final designation of the Developer as the redeveloper of the Site in accordance with its usual procedures no later than July 1, 1985 for Phase I and July 1, 1986 for Phase II, unless extended by the BRA. Simultaneously therewith, if the Developer shall not then be in default of any of its obligations hereunder, the Developer and the BRA shall execute the Lease or Leases and the date of execution thereof shall be the "Lease Commencement Date(s)".

4. Forthwith after the execution of this Agreement the parties shall enter into negotiations intended to result in the documents which are to become the Lease or Leases. The terms thereof shall be consistent with the terms and provisions of the Transaction Documents and this Agreement. Such negotiations shall be concluded by May 31, 1985 for Phase I and May 31, 1986 for Phase II.

5. The sole obligation of the BRA shall be timely to perform its duties with respect to approvals required hereunder of the BRA, with respect to final designation and with respect to negotiation and execution of the Lease or

Leases and to cooperate fully with the Developer in efforts to obtain other approvals from the City of Boston and other governmental authorities. • The BRA does not guaranty the issuance of any such approvals. Consistent therewith, the Site in regard to the respective phases is to be delivered on the Lease Commencement Date(s) in its then condition, "as is", it being agreed that, during the period of this Agreement, the Developer will have the opportunity to examine the same in all respects (including subsurface conditions and utilities). The BRA has made no representations or warranties of any kind with respect to such condition and the BRA shall have no obligation to do any work on or with respect to the Site, or the condition thereof.

6. The BRA has made no representation or warranty as to the title to the Site and the Developer shall make such investigations as it desires to satisfy itself as to the state of such title.

7. The Developer shall comply with the Design Review Procedure as set forth in Exhibit C attached hereto and made a part hereof, with respect to the formal stages of submissions and approvals of the Schematic Design, the Design Development and the Contract Documents (the "Design Materials") for the Improvements to be constructed and installed by the Developer in the redevelopment of the Site.

8. The Developer shall submit to the BRA a copy (certified by the Developer to be true and correct) of a firm commitment issued by a lender which is reasonably satisfactory to the BRA, whereby such lender agrees to furnish construction financing for the Improvements contained in the Design Materials together with evidence satisfactory to the BRA that the Developer has demonstrated, to the satisfaction of such lender, the availability of equity capital which, when combined with the financing to be provided by such lender, is adequate to complete the Improvements and provide for all aspects of construction for the redevelopment of the Site in accordance with the Transaction Documents and this Agreement. Such commitment shall be accompanied by such further materials as the BRA may reasonably request evidencing satisfaction of, or the Developer's ability to satisfy, the conditions to lending therein set forth.

9. The Developer shall at all times keep the BRA fully and currently advised of the status of all aspects of the Developer's progress in meeting the terms and provisions of the Agreement with respect to the redevelopment of the Site, including without limiting the generality of the foregoing, development of the Design Materials, securing of financing and arrangements for construction. All contracts entered into by the Developer respecting the redevelopment of the Site shall obligate the parties to act in a manner consistent with the obligations of the Developer under this Agreement. During the implementation of any such contracts the BRA shall have the right to review all aspects of the work performed thereunder in order to insure that such work is being undertaken in a manner consistent with the obligations of the Developer under this Agreement.

10. Attached hereto and made a part of this Agreement is a License dated of even date herewith granted by the BRA to the Developer (the "License"). The Developer hereby agrees to perform and observe all the terms and conditions of the License. The Developer shall make available to the BRA the results of all tests, surveys and examinations resulting from its entry upon the Site.

11. The Developer agrees that all studies undertaken by it and all work done by it for or with respect to the redevelopment of all or any part of the Site shall be at its sole cost and expense and without liability to the BRA, that the same shall be undertaken in compliance with all applicable laws and regulations and that the Site shall be restored to its prior condition, to the extent reasonably possible, after any physical disruption to the surface or subsurface thereof in the course of any pre-construction testing or exploration.

12. The Developer hereby agrees to defend, indemnify and hold harmless the BRA, its members, officers and employees from and against all claims, costs, fees, expenses, liabilities and damages (including attorneys fees and costs of investigation and litigation) whatsoever which may be incurred or for which liability may be asserted as a result of any activities undertaken by or for the Developer in its implementation of this Agreement or its activities with respect to the Site.

13. During the period of this Agreement or until termination in accordance with Paragraph 14 hereof, the Developer shall pay to the BRA the sum of Five Hundred (\$500.00) Dollars per phase per month in advance for the first six (6) months, said sum increasing every six (6) months by Five Hundred (\$500.00) Dollars per phase per month (so that the aggregate monthly payment during the second six (6) month period shall be Two Thousand (\$2,000.00) Dollars, and so on).

14. If: (i) the Developer shall not make any monetary payment hereunder when due, or (ii) the Developer shall neglect or fail to perform or observe any other obligation herein contained to be performed or observed on the part of the Developer and the BRA shall serve upon the Developer notice of such neglect or failure and if the same shall not be cured within ten (10) days of notice thereof, or (iii) the Lease or Leases shall not, for whatever reason other than failure of the BRA to act in good faith with respect to the negotiation and execution thereof, be executed by July 1, 1985 for Phase I or July 1, 1986 for Phase II, the BRA may at any time thereafter upon further notice, terminate this Agreement and rescind the tentative designation of the Developer and terminate all other rights, interests and claims of the Developer to and in the Site. Except with respect to those obligations which survive termination as provided in following sentence, termination of this Agreement, together with retention of all payments theretofor made hereunder, shall be the sole remedy in lieu of all of the rights and remedies the BRA may have against the Developer on account of any failure or default on the part of the Developer hereunder. Notwithstanding such termination, the Developer shall remain liable for all obligations theretofore accrued by it hereunder and the obligations of the Developer under Paragraphs 10, 11 and 12 hereof shall survive the termination of the Agreement, but otherwise the Developer obligations shall not survive termination.

15. a. Time is of the essence in the performance of this Agreement, and the parties hereto shall diligently, promptly and punctually perform the obligations required to be performed by each of them and shall diligently, promptly and punctually fulfill the conditions applicable to each of them.

b. The waiver of the BRA of any breach of any term or condition herein contained shall not be deemed to be a waiver of such term or condition or any subsequent breach of the same or any other term or condition herein contained.

c. Recognizing that the parties may find it necessary to establish to third parties the then current status of performance hereunder, either party, on the written request of the other made from time to time, will promptly furnish a written statement on the status of any matter pertaining to this Agreement.

d. If any term or provision of this Agreement, or the application thereof to an person or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

e. No member of the Congress of The United States of America shall be admitted to any share or part thereof, or to any benefit to arise from this Agreement. No member, official, or employee of the BRA shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his personal interest or the interests of any corporation, partnership, or association in which he is, directly or indirectly, interested.

f. No member, official or employee of the BRA shall be personally liable to the Developer in the event of any default or breach by the BRA or for any amount which may become due to the Developer or on any obligations under the terms of this Agreement.

g. Except as other wise specifically provided in this Agreement whenever under this Agreement approvals, authorizations, determinations, satisfactions or waivers are required or permitted, such approvals, authorizations, determinations, satisfactions or waivers shall be effective and valid only when given in writing signed by a duly authorized officer of the BRA or the Developer.

Any notice required or desired to be given pursuant to this Agreement shall be in writing with copies directed as indicated below and shall be personally served, or, in lieu of personal service, by depositing same in the United States mail, postage prepaid, certified or registered mail. If such notice shall be addressed to the BRA, the address of the BRA is:

Director's Office
Boston Redevelopment Authority
One City Hall Square / 9th Floor
City Hall
Boston, Massachusetts 02110

and if addressed to the Developer, the address of the Developer is:

First Charlestown Development Group, Incorporated
c/o The Codman Company, Inc.
211 Congress Street
Boston, Massachusetts

Either the BRA or the Developer may change its respective address by giving written notice to the other in accordance with the provisions of this Paragraph.

h. Nothing herein shall constitute the relation between the parties hereto to be other than an independent one, it being their intent that this Agreement shall not constitute a partnership or a joint venture.

i. Upon execution of the Lease or Leases as required hereby, this Agreement shall terminate, provided that the provisions of Paragraphs 10, 11, and 12, shall survive the termination of the Agreement or be incorporated into the Lease or Leases.

j. In its discretion, the BRA may waive, amend or alter any conditions herein contained to be performed for its benefit, including the terms and conditions of the Transaction Documents.

k. The rights and obligations of the parties hereto shall be binding upon and shall inure to the benefit of their respective successors and assigns (in case of the Developer, to the extent any such assignment is herein permitted) of the parties hereto. The Developer may assign all or some of its rights or obligations hereunder subject to the prior approval of the BRA.

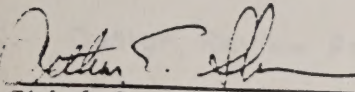
16. The Developer acknowledges that all of the redevelopers within the Historic Monument Area of the Charlestown Navy Yard may be required by the BRA to contribute amounts to maintain the public park area therein which would not exceed five (\$.05) cents per gross square foot of both phases of the Improvements on the Site for the first year or any part thereof after receipt of a certificate of occupancy and thereafter subject to an escalation formula for the remainder of the period of the Lease contemplated by this Agreement.

17. The Developer acknowledges that the Improvements are comprised in part of uses described in Section 26-3 of Article 26 of the Boston Zoning Code as in effect on the date hereof (the "Linkage Provisions"), and that the aggregate floor area of the Improvements dedicated to such uses may exceed 100,000 square feet. Accordingly, the Improvements constitute a Development Impact Project as defined in the Linkage Provisions. The Developer agrees that in connection with its application for zoning relief pursuant to the Boston Zoning Code it will enter into a Development Impact Project Agreement, on terms and conditions to be agreed upon between the parties hereto, for the payment of the Development Impact Project Exaction required pursuant to the Linkage Provisions.

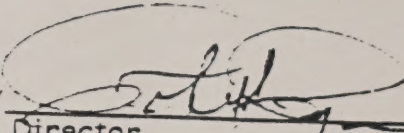
WITNESS the execution hereof this 12th day of July 1984,
1984, under seal.

APPROVED AS TO FORM:

BOSTON REDEVELOPMENT AUTHORITY

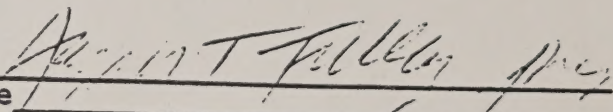


Chief General Counsel
BRA

By 

Director

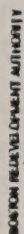
FIRST CHARLESTOWN DEVELOPMENT
GROUP, INCORPORATED

BY 

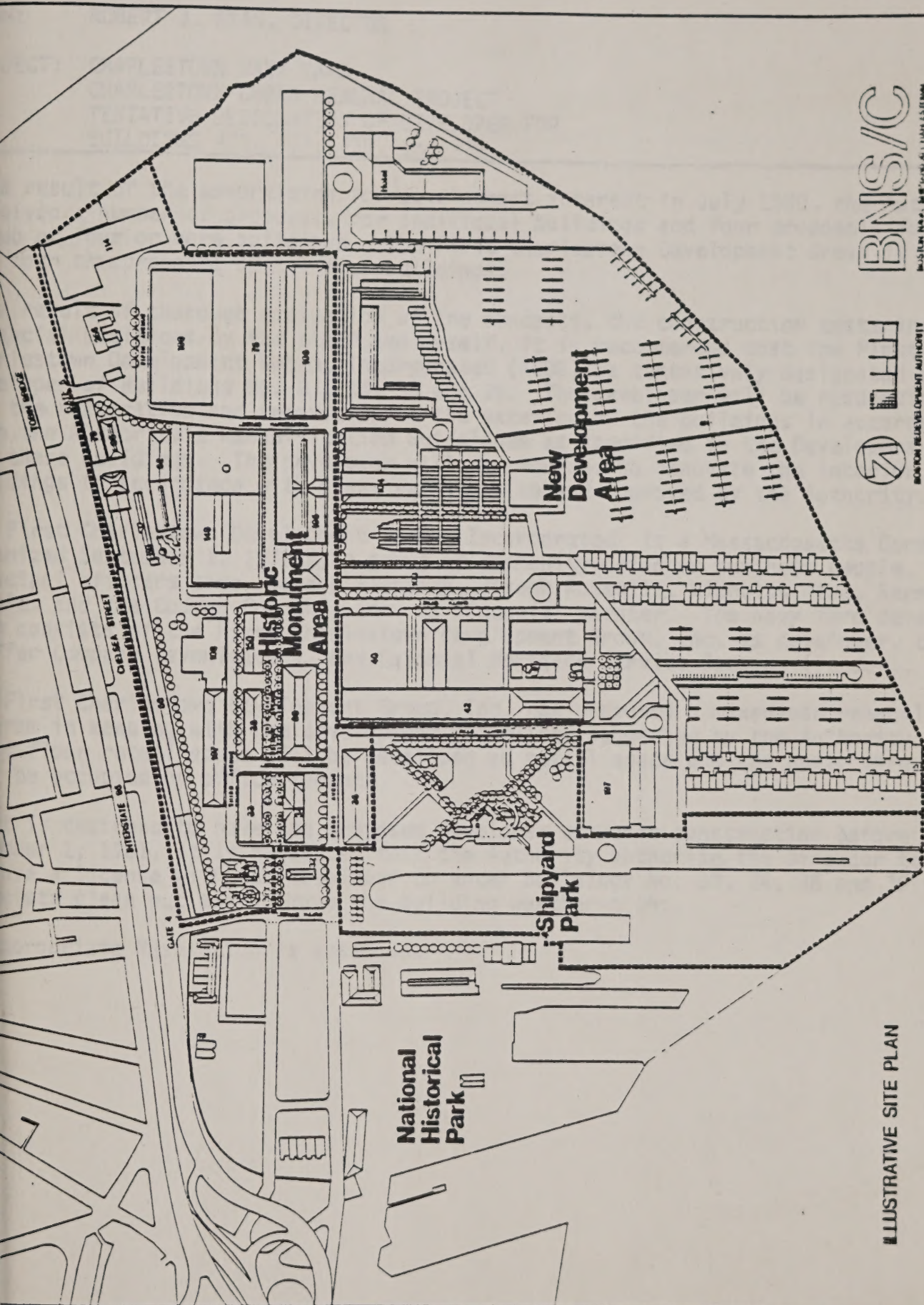
Title _____

LIST OF EXHIBITS

- A. Site
- B. Transaction Documents
- C. Design Review Procedure
- D. License

[illegible]

ILLUSTRATIVE SITE PLAN



NOVEMBER 12, 1981

BOSTON REDEVELOPMENT AUTHORITY

TO: ROBERT J. RYAN, DIRECTOR

SUBJECT: CHARLESTOWN NAVY YARD
CHARLESTOWN URBAN RENEWAL PROJECT
TENTATIVE DESIGNATION OF DEVELOPER FOR
BUILDINGS #33, #34, #38, and #39

As a result of the advertising for development interest in July 1980, the Authority received a number of proposals for individual buildings and four proposals for a group of four or more buildings. The First Charlestown Development Group is one of four that proposed on all four buildings.

As a result of thorough evaluation of the concepts, the construction costs, and the financial positions, by the staff and myself, it is recommended that the First Charlestown Development Group, Incorporated (FCDG) be tentatively designated as developer of Buildings No. 33, 34, 38 and 39. The developer will be responsible for the restoration and renovation of the exterior of the buildings in accordance with the Authority's Rehabilitation Guidelines as specified in the Developers Kit for these buildings. The developer will be required to renovate the interior of the buildings in accordance with plans submitted to and approved by the Authority.

First Charlestown Development Group, Incorporated is a Massachusetts Corporation, organized September 1, 1979 by a group of community-oriented business people. The principal officers are: Joseph Flaherty, Joseph Rosselle, Nicholas Pino, Bernard Le, and the Codman Company, Inc. as financial partner. The Navy Yard development project consists of the First Charlestown Development Group, Inc. as developer, the Leifer Company (syndicator), and Colonial Mortgage Service Company (lender).

First Charlestown Development Group, Inc. has proposed a mixed-use rehabilitation program in keeping with the development guidelines suggested by the Authority. The ground floor retail space will be developed as retail space and the upper three floors will be occupied by office tenants.

It is desirable to have the proposed developer commence construction before November 1, 1981, it is requested that the Authority authorize the Director to execute a license with the developer to enter Buildings No. 33, 34, 38 and 39 for immediate clean out and to make the building weather-tight.

Appropriate Resolution is attached.

RESOLUTION OF THE BOSTON REDEVELOPMENT AUTHORITY
RE: TENTATIVE DESIGNATION OF REDEVELOPER
BUILDINGS NO. 33, 34, 38 AND 39
IN THE CHARLESTOWN URBAN RENEWAL AREA
PROJECT NO. MASS. R-55

AS, the Boston Redevelopment Authority, (hereinafter referred to as the "Authority") entered into a contract for loan and capital grant with the Federal Government under Title I of the Housing Act of 1949, as amended, which contract provides for financial assistance in the hereinafter identified Project; and

AS, the Urban Renewal Plan for the Charlestown Urban Renewal Area, Project No. R-55, (hereinafter referred to as the "Project Area"), has been duly reviewed and approved in full compliance with the local, State and Federal law; and

AS, the Authority is cognizant of the conditions that are imposed in the undertaking and carrying out of urban renewal projects with Federal financial assistance under said Title I, including those prohibiting discrimination because of race, color, religion, or national origin; and

AS, The First Charlestown Development Group, Inc. has expressed an interest in and has submitted a satisfactory proposal for the development of Buildings No. 33, 34, and 39 in the Charlestown Navy Yard Urban Renewal Area; and

AS, the Authority is cognizant of Chapter 30, Sections 61 and 62 of the Massachusetts General Laws, as amended, with respect to minimizing and preventing damage to the environment;

THEREFORE, BE IT RESOLVED BY THE BOSTON REDEVELOPMENT AUTHORITY:

That the First Charlestown Development Group, Inc. be and hereby is tentatively designated as Redeveloper of Buildings No. 33, 34, 38 and 39 in the Charlestown Navy Yard Urban Renewal Area subject to:

- (a) Publication of all public disclosure and issuance of all approvals required by the Massachusetts General Laws and Title I of the Housing Act of 1949, as amended;
- (b) Submission by the Redeveloper to the Authority within ten (10) days of a letter in which
 - (i) The Redeveloper agrees to begin substantial exterior and interior construction on or before December 1, 1981 for clean out purposes and to make the buildings weather-tight

(ii) That the Redeveloper and the Authority agrees to use their best efforts to execute a long term Lease in a form satisfactory to the Authority by February 1, 1982; however not withstanding that if for any reason the lease is not signed by that date through no fault of the parties, the Redevelopers agree by this letter of intent to negotiate in good faith a Management Agreement and a Payment In Lieu of Taxes Agreement in a form satisfactory to the Authority. Said payments are proposed to commence on February 1, 1982. This minimum payment will continue and be incorporated in the form of the final lease. It is understood by the Redeveloper that the lease shall contain other provisions regarding the rental in addition to the payment in lieu of taxes incorporated in the letter of intent. In addition to these items, the letter of intent will require the Redeveloper to post a cash or letter of credit in an amount satisfactory in form and amount to the Authority for the proper and timely completion of the rehabilitation and to further insure the above referenced payments in lieu of taxes.

(iii) The redeveloper agrees to submission within one hundred and twenty (120) days in a form satisfactory to the Authority of:

- (a) Evidence of the availability of necessary equity funds, as needed; and
- (b) Evidence of firm financial commitments from banks or other lending institutions; and
- (c) Final Working Drawings and Specification; and
- (d) Proposed development and rental schedule.

That the leasing of Buildings No. 33, 34, 38, and 39 is the appropriate method making the land available for redevelopment.

That the Director is authorized to execute a license with the developer to enter upon this Authority owned property in the Charlestown Navy Yard as the Director determines proper for immediate clean out and making the building other tight prior to the execution of a formal lease agreement. Said license to include a "Hold Harmless" indemnification of the Authority and such other conditions as the Director deems proper and in the best interest of the Authority.

That it is the firm intent of the Authority to revoke this designation if the above referred to conditions are not complied with.

That the Secretary be and hereby is authorized to publish notices of the proposed transaction in accordance with Section 105 (e) of the Housing Act of 1937, as amended including information with respect to the "Redeveloper's Statement for Public Disclosure" (Federal Form H- 6004).

THE DEVELOPMENT TEAM

FOR THE REDEVELOPMENT OF BUILDINGS #33, 34, 38 & 39 AT

THE CHARLESTOWN NAVY YARD

OWNER-DEVELOPER

First Charlestown Development Group,
President: Joseph Flaherty

DEVELOPMENT COORDINATOR

The Codman Company, Inc.
211 Congress Street
Boston, MA 02110

Partner in Charge: Edward Haddad

LEASING AGENT

The Codman Company, Inc.

Partner in Charge: Lawrence Bianchi

PROPERTY MANAGEMENT

Codman Management Co., Inc.

Partner in Charge: John Killian

ARCHITECTURE

Boston Architectural Team
184 High Street
Boston, MA 02110

Partner in Charge: Robert Verrier

LEGAL COUNSEL

Gaston Snow & Ely Bartlett
One Federal Street
Boston, MA 02110

Partner in Charge: John Dineen

AUDITING

Touche Ross & Co.
One Federal Street
Boston, MA 02110

Partner in Charge: Roger Marckhus

SPECIAL LEGAL COUNCIL

Leo Sontag ESQ.
Attorney At Law
40 Court St.
Boston

CHARLESTOWN NAVY YARD
LEASE COMMENCEMENT AGREEMENT SUMMARY
BUILDINGS #33, #34, #38, AND #39

PROPERTY: Buildings #33, #34, #38, and #39 at Charlestown Navy Yard

LESSOR: Boston Redevelopment Authority

LESSEE: First Charlestown Development Group, Incorporated (FCDG)

TERM: 80 years

FINAL DESIGNATION: Simultaneous with construction start and no later than 7/1/85 for Phase I and 7/1/86 for Phase II as outlined below, subject to extension by agreement of Lessor.

LEASE COMMENCEMENT DATE: Simultaneous with Final Designation

RENT:

<u>Pre - Construction</u>	
Phase I	(Building 33; 33,000 GSF)
	(Building 34; 24,000 GSF)
Phase II	(Building 38; 25,000 GSF)
	(Building 39; 78,000 GSF)

Immediately upon execution of this Agreement (i.e., July 1, 1984) the Lessee will commence a monthly payment of \$500 for each Phase for a total of \$1,000 per month. After 6 months, the payment will increase by \$500 for each Phase and again at each 6 month interval until construction begins. Additionally, the Lessee will take responsibility for all maintenance and management of the buildings and surrounding grounds as of July 1, 1984.

Construction

Construction will begin on Phase I no later than July 1, 1985 and on Phase II no later than July 1, 1986.

Construction period rent will be 1/2 the operational period base rent, or 35¢/GSF per annum payable monthly in advance, commencing on the Lease Commencement Date.

Operation

A. Base Rent \$.70/GSF per annum payable monthly in advance, commencing when the respective phases are completed.

- B. Percentage Rent - 15% of annual net cash flow Payable monthly in advance based on a budget prepared annually and submitted to Lessor not less than 60 days prior to the beginning of each fiscal year. Annual net cash flow shall be calculated by subtracting the following items from effective gross income: certified operating expenses, real estate taxes, Base Rent, and annual amount equal to 13.5% of certified total project costs. Within 90 days of the end of each fiscal year Lessee shall submit a calculation of Percentage Rent for that year certified by a CPA acceptable to Lessor and shall make a payment or receive a credit of Percentage Rent based on the certified statement. Until the annual Percentage Rent amount is certified, and payments and credits are allocated, the monthly Percentage Rent payment in any fiscal year shall be no less than one-twelfth of the fiscal year.

RENEWAL:

None

SUBORDINATION:

Lessor's fee interest in the Property will not be subordinated. Lessor's Base Rent will not be subordinated. Percentage Rent will not be subordinated. In the event of a foreclosure, the Lessor may defer Base and Percentage Rent for three years to give Lender opportunity to cure.

FINANCING:

Any initial permanent financing may not exceed certified total project costs.

REFINANCING:

Lessor will receive as Additional Rent 15% of net refinancing proceeds upon refinancing.

SALE:

Lessor will receive as Additional Rent 15% of net sales proceeds upon sale of Lessee's interest.

ALIENATION:

Lessee may not dispose of its interest in the Project for five years after issuance of a final certificate of occupancy. Thereafter, Lessee may not dispose of its interest in the Project without the written consent of Lessor, such consent not to be unreasonably withheld.

**ESTOPPEL
CERTIFICATE:**

Lessor agrees to provide any lender that notifies the Lessor of its mortgage interest with an Estoppel Certificate granting such lender notice of default and right to cure as may reasonably be required.

**CONSTRUCTION
OF IMPROVEMENTS:**

Lessee must make improvements on the Property in accordance with plans and specifications approved by Lessor as part of Lessee's Final Designation within 24 months of such Designation.

**BOOKS AND
RECORDS:**

Lessee must provide Lessor with a statement of project costs computed in accordance with the Land Lease, certified by a CPA, and approved by the Lessor, within 120 days of issuance of a final certificate of occupancy. Lessor will use industry standards as a guide to Lessor's approval.

In addition to the reports required for the Percentage Rent calculation, Lessee must provide Lessor with a statement of operation for the Project certified by a CPA, and approved by the Lessor, within 90 days of the close of each fiscal year. Lessor will use industry standards as a guide to Lessor's approval.

**AFFIRMATIVE
ACTION:**

Lessee must comply with the Mayor's Executive Order concerning Affirmative Action goals for construction employment, permanent employment and minority business contracting. The Lessor will assist the Lessee in meeting these goals.

**REAL ESTATE
TAXES:**

The Property will be fully taxable by the Assessor of the City of Boston at applicable rates.

LIABILITY:

Lessor and the City of Boston will not incur any expenses in the development of the Property. The Property will be leased in an "as is" condition. Lessee will pay for the cost of any utility relocation not paid by any utility company.

EXHIBIT C

DESIGN REVIEW PROCEDURES

CITY OF BOSTON

Raymond L. Flynn, Mayor

BOSTON REDEVELOPMENT AUTHORITY

Robert L. Farrell, Chairman

Joseph J. Walsh, Vice-Chairman

James K. Flaherty, Treasurer

Clarence J. Jones, Vice-Treasurer

William A. McDermott, Jr., Member

Kane Simonian, Secretary

Robert J. Ryan, Director

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BOSTON REDEVELOPMENT AUTHORITY DESIGN REVIEW PROCEDURE

All development proposals submitted to the Boston Redevelopment Authority will be subject to design review and approval. Required submissions shall be made at four stages of project design and construction: Schematic Design, Design Development, Contract Documents, and Construction Inspection. Submissions shall include the materials described herein, except that for projects of limited size, scope and impact on their surroundings, certain of the required materials may be waived by the Authority. This determination will be made at the start of each stage of the Design Review Procedure.

In addition to the four-stage Design Review Procedure, other reviews at the request of either the developer or the Authority are encouraged. It is also expected that reasonable requests for progress prints and other materials in addition to those required herein will be met at any time.

Review of Stages 2, 3 and 4 will be limited to consideration of design refinements, new elements not present in previous submissions, and conformity with previously approved submissions.

NOTE: In addition to design review and approval, projects under consideration by the Boston Redevelopment Authority are usually required to submit the following information: (a) documentation of developer experience, (b) financial information including pro-formas, (c) environmental analyses, and (d) any other information deemed appropriate by the Authority.

DESCRIPTION OF SUBMISSION REQUIREMENTS

All drawings shall be clearly identified and shall include north arrow and graphic scale.

For each submission stage, in addition to full-size scale drawings, please provide three copies of a bound booklet containing all submission materials at a reduced size.

I. SCHEMATIC DESIGN

The intent of this review is to secure agreement on the basic design concept. The following materials are required:

- A. Written description of the project including all program elements and space allocation for each element; zoning requirements and preliminary zoning calculations.
- B. Neighborhood plan and sections at an appropriate scale (1" = 50' or larger) showing relationships of the proposal to the neighborhood's massing, building height, scaling elements, open space, major topographic features, pedestrian and vehicular circulation, and land use; black and white 8" x 10" photographs of the site and neighborhood.
- C. Site plan at an appropriate scale (1" = 20' or larger) showing:
 - 1. General relationships of proposed and existing adjacent buildings and open space. Open spaces defined by buildings on adjacent parcels and across streets shall be included.
 - 2. General location of pedestrian ways, driveways, parking, service areas, streets, and major landscape features.
 - 3. Pedestrian and vehicular (including service) access and flow through the parcel and to adjacent areas.
 - 4. Survey information, such as existing elevations, benchmarks, utilities, etc.
 - 5. Current ownership (including purchase options) of all portions of the development site.
 - 6. Phasing possibilities, if any.
 - 7. Construction limits, if applicable.
- D. Site sections (1" = 20' or larger) showing relationships to adjacent buildings and spaces.
- E. Schematic building plans showing ground floor and typical upper floor(s).

- F. Massing model at 1" = 100' for use in the Authority's downtown cityscape model.
- G. Shadow studies showing the effects of the proposed massing on the surrounding area with particular attention to nearby public spaces including sidewalks, parks, and plazas.

Submission of site plan and massing options, as well as other sketches and diagrams which will help clarify design issues and the proposed solution is encouraged. After review and agreement on the program, site plan and massing, the following materials are required:

- H. Building and site improvement plans, elevations in the context of the surrounding area, and sections showing organization of functions and spaces, all at an appropriate scale (e.g., 1" = 8'). These drawings shall describe architectural massing, facade design, and proposed materials.
- I. Site model at an appropriate scale (1" = 20' or larger). All nearby buildings and streets should be included to illustrate the relationship of proportions, materials and facade treatment to the surrounding buildings.
- J. Wind impact studies at pedestrian levels describing the effect of the project on the surrounding area with particular attention to nearby public spaces including sidewalks, parks, and plazas.
- K. Estimated construction schedule for the project.
- L. Eye-level perspective showing the proposal in context of the surrounding area.
- M. Proposed schedule for submission of Design Development materials.

Upon approval by the Authority of the SCHEMATIC DESIGN, the following submission is required:

II. DESIGN DEVELOPMENT

The intent of this review is to secure agreement on the final design prior to detailed work on Contract Documents. The following materials are required:

- A. Written description of the project (including all program elements and space allocation for each element) and zoning calculations.
- B. Site plan at an appropriate scale (e.g., 1" = 16' or as determined after approval of SCHEMATIC DESIGN) showing:
 - 1. Relationship of proposed building and open space to existing adjacent buildings, open spaces, streets, and buildings and open spaces across streets.

2. Proposed site improvements and amenities including paving, landscaping, lighting and street furniture.
 3. Building and site dimensions, including setbacks and other dimensions subject to zoning requirements.
 4. Any site improvements or areas proposed to be developed by some other party (including identification of responsible party).
 5. Proposed site grading, including typical existing and proposed grades at parcel lines.
- C. Site sections at an appropriate scale (e.g., 1" = 16' or as determined after approval of SCHEMATIC DESIGN).
- D. Building plans (including preliminary structural and mechanical drawings), sections and elevations at an appropriate scale (e.g., 1" = 8') developed from approved schematic design drawings. Elevations shall show the project in the context of the surrounding area as required by the Authority to illustrate relationships of character, scale and materials. All plans, sections and elevations shall reflect the impact of proposed structural and mechanical systems on the appearance of exterior facades, interior public spaces, and roofscape.
- E. Large-scale (e.g., 3/4" = 1'-0") typical exterior wall sections, elevations and details sufficient to describe specific architectural components and methods of their assembly.
- F. Outline Specifications of all materials for site improvements, exterior facades, roofscape, and interior public spaces.
- G. Study model at an appropriate scale (e.g., 1" = 16', or as determined after approval of SCHEMATIC DESIGN) showing refinements of facade design.
- H. Eye-level perspective drawings showing the project in the context of the surrounding area.
- I. Proposed schedule for submission of Contract Documents.

Upon approval by the Authority of the DESIGN DEVELOPMENT, the following submission is required:

III. CONTRACT DOCUMENTS

The intent of this review is to secure agreement on the detailed design of the proposal. The following materials are required:

- A. Written description of the project, (including all program elements and space allocation for each element) and zoning calculations. •
- B. Site plan showing all site development and landscape details for lighting, paving, planting, street furniture, utilities, grading, drainage, access, service, and parking.
- C. Complete architectural and engineering Drawings and Specifications.
- D. Full-size assemblies (at the project site) of exterior materials and details of construction.
- E. Eye-level perspective drawings or presentation model that accurately represents the project, and a rendered site plan showing all adjacent existing and proposed structures, streets and site improvements.
- F. Site and building plan at 1" = 100' for Authority use in updating its 1" = 100' Photogrammetric Map Sheets.
- G. Construction schedule for the project.

During preparation of the Contract Documents, it is the developer's responsibility to notify the Authority, promptly and secure its approval of all changes from the approved Design Development Drawings that are contemplated for site improvements, exterior facades, roofscape and interior public spaces. Progress Drawings representing 50% completion of the Contract Documents may be required for review by the Authority.

Upon approval by the Authority of the CONTRACT DOCUMENTS, the following submissions are required:

V. CONSTRUCTION INSPECTION

- A. All Contract Addenda, Change Orders, and other modifications and revisions of approved Contract Documents which affect site improvements, exterior facades, roofscape, and interior public spaces.
- B. Shop drawings of architectural components which differ from, or were not fully described in Contract Documents.

Site visits will be conducted to insure construction of the project in accordance the approved Contract Documents.

EXHIBIT D

LICENSE

BOSTON REDEVELOPMENT AUTHORITY

TO

FIRST CHARLESTOWN DEVELOPMENT GROUP, INCORPORATED

THE BOSTON REDEVELOPMENT AUTHORITY, (herein called the "Authority") does hereby authorize and permit FIRST CHARLESTOWN DEVELOPMENT GROUP, INCORPORATED, Boston, Massachusetts, its officers, employees, agents and servants, (herein called the "Licensee"), to enter upon certain premises of the Authority situated within the Project Area (as defined below) in the City of Boston, for purposes of the following:

To inspect and perform tests on the building foundation walls and structures for architectural work and showing potential lenders Buildings 33, 34, 38 and 39 in the Charlestown Navy Yard (the "Premises"), in the Charlestown Urban Renewal Area, Project No. Mass. R-55.

This License is subject to the following terms and conditions:

1. The License may be revoked by the Authority simultaneously with the termination of the designation, as referred to in the Management Agreement executed by the parties of even date herewith.

2. The License agrees to obtain the following insurance, naming the Authority as co-insured and furnish proof of such insurance prior to entry of the Premises:

a. Workmen's Compensation.

b. General liability insurance for bodily injury of limit not less than \$1,000,000.00 for one person and subject to a limit of \$3,000,000.00 for one accident; and also property damage liability of not less than \$1,000,000.00, for each accident.

c. Automobile liability insurance in the event automobiles, etc., are used in connection with performance under the License. This insurance should provide bodily injury limits as required (b) above and also property damage liability of not less than \$100,000.00 for each accident.

3. The Licensee shall, if the work requires occupancy of a public street or alley, obtain required permits from the City of Boston before proceeding with such work.

4. The Licensee agrees to pay, indemnify and save harmless the Authority from all suits, actions, claims, damages, demands or losses, expenses and costs of every kind and description to which the Authority may be subjected or sustain by reason of the work herein licensed, or by reason of any neglect or act of the Licensee, its agents, servants, employees, visitors, guests, or any person or corporation dealing with the Licensee in any way in the occupancy or the use of the Property.

5. The Authority shall not be bound to reimburse the Licensee, its agents, employees, contractors or subcontractors for any funds expended on the work hereby licensed.

6. The Licensee shall not permit, commit, nor suffer waste or impairment of the Property.

7. The Licensee shall adhere to all provisions of codes and ordinances of the City of Boston and the Commonwealth of Massachusetts.

8. The Licensee may assign its rights and obligations under this Agreement, with the prior written approval of the BRA.

IN WITNESS WHEREOF, on the _____ day of _____, 1984, at Boston, Massachusetts, the parties hereto have caused this License in three counterparts to be signed, sealed and delivered by their duly authorized officers, respectively.

BOSTON REDEVELOPMENT AUTHORITY

By _____
Robert J. Ryan, Director

FIRST CHARLESTOWN DEVELOPMENT
GROUP, INCORPORATED

By *Robert T. Flaherty, Jr.*
Title _____

DESIGN REVIEW PROCEDURES

Exhibit D

DEVELOPMENT APPROVAL PROCESS

BOSTON REDEVELOPMENT AUTHORITY

1984

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DESIGN REVIEW PROCEDURES

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In addition to the four-stage Design Review Procedure, other reviews at the request of either the developer or the Authority are encouraged. It is also expected that reasonable requests for progress prints and other materials in addition to those required herein will be met at any time.

Review of Stages 2, 3 and 4 will be limited to consideration of design refinements, new elements not present in previous submissions, and conformity with previously approved submissions.

NOTE: In addition to design review and approval, projects under consideration by the Boston Redevelopment Authority are usually required to submit the following information: (a) documentation of developer experience, (b) financial information including pro-formas, (c) environmental analyses, and (d) any other information deemed appropriate by the Authority.

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- C. Site plan at an appropriate scale (1" = 20' or larger) showing:
 - 1. General relationships of proposed and existing adjacent buildings and open space. Open spaces defined by buildings on adjacent parcels and across streets shall be included.
 - 2. General location of pedestrian ways, driveways, parking, service areas, streets, and major landscape features.
 - 3. Pedestrian and vehicular (including service) access and flow through the parcel and to adjacent areas.
 - 4. Survey information, such as existing elevations, benchmarks, utilities, etc.
 - 5. Current ownership (including purchase options) of all portions of the development site.
 - 6. Phasing possibilities, if any.
 - 7. Construction limits, if applicable.
- D. Site sections (1" = 20' or larger) showing relationships to adjacent buildings and spaces.
- E. Schematic building plans showing ground floor and typical upper floor(s).

- F. Massing model at 1" = 100' for use in the Authority's downtown cityscape model.
- G. Shadow studies showing the effects of the proposed massing on the surrounding area with particular attention to nearby public spaces including sidewalks, parks, and plazas.

Submission of site plan and massing options, as well as other sketches and diagrams which will help clarify design issues and the proposed solution is encouraged. After review and agreement on the program, site plan and massing, the following materials are required:

- H. Building and site improvement plans, elevations in the context of the surrounding area, and sections showing organization of functions and spaces, all at an appropriate scale (e.g., 1" = 8'). These drawings shall describe architectural massing, facade design, and proposed materials.
- I. Site model at an appropriate scale (1" = 20' or larger). All nearby buildings and streets should be included to illustrate the relationship of proportions, materials and facade treatment to the surrounding buildings.
- J. Wind impact studies at pedestrian levels describing the effect of the project on the surrounding area with particular attention to nearby public spaces including sidewalks, parks, and plazas.
- K. Estimated construction schedule for the project.
- L. Eye-level perspective showing the proposal in context of the surrounding area.
- M. Proposed schedule for submission of Design Development materials.

Upon approval by the Authority of the SCHEMATIC DESIGN, the following submission is required:

II. DESIGN DEVELOPMENT

The intent of this review is to secure agreement on the final design prior to detailed work on Contract Documents. The following materials are required:

- A. Written description of the project (including all program elements and space allocation for each element) and zoning calculations.
- B. Site plan at an appropriate scale (e.g., 1" = 16' or as determined after approval of SCHEMATIC DESIGN) showing:
 - 1. Relationship of proposed building and open space to existing adjacent buildings, open spaces, streets, and buildings and open spaces across streets.

2. Proposed site improvements and amenities including paving, landscaping, lighting and street furniture.
 3. Building and site dimensions, including setbacks and other dimensions subject to zoning requirements.
 4. Any site improvements or areas proposed to be developed by some other party (including identification of responsible party).
 5. Proposed site grading, including typical existing and proposed grades at parcel lines.
- C. Site sections at an appropriate scale (e.g., 1" = 16' or as determined after approval of SCHEMATIC DESIGN).
- D. Building plans (including preliminary structural and mechanical drawings), sections and elevations at an appropriate scale (e.g., 1" = 8') developed from approved schematic design drawings. Elevations shall show the project in the context of the surrounding area as required by the Authority to illustrate relationships of character, scale and materials. All plans, sections and elevations shall reflect the impact of proposed structural and mechanical systems on the appearance of exterior facades, interior public spaces, and roofscape.
- E. Large-scale (e.g., 3/4" = 1'-0") typical exterior wall sections, elevations and details sufficient to describe specific architectural components and methods of their assembly.
- F. Outline Specifications of all materials for site improvements, exterior facades, roofscape, and interior public spaces.
- G. Study model at an appropriate scale (e.g., 1" = 16', or as determined after approval of SCHEMATIC DESIGN) showing refinements of facade design.
- H. Eye-level perspective drawings showing the project in the context of the surrounding area.
- I. Proposed schedule for submission of Contract Documents.

Upon approval by the Authority of the DESIGN DEVELOPMENT, the following submission is required:

III. CONTRACT DOCUMENTS

The intent of this review is to secure agreement on the detailed design of the proposal. The following materials are required:

- A. Written description of the project, (including all program elements and space allocation for each element) and zoning calculations.
- B. Site plan showing all site development and landscape details for lighting, paving, planting, street furniture, utilities, grading, drainage, access, service, and parking.
- C. Complete architectural and engineering Drawings and Specifications.
- D. Full-size assemblies (at the project site) of exterior materials and details of construction.
- E. Eye-level perspective drawings or presentation model that accurately represents the project, and a rendered site plan showing all adjacent existing and proposed structures, streets and site improvements.
- F. Site and building plan at 1" = 100' for Authority use in updating its 1" = 100' Photogrammetric Map Sheets.
- G. Construction schedule for the project.

During preparation of the Contract Documents, it is the developer's responsibility to notify the Authority, promptly and secure its approval of all changes from the approved Design Development Drawings that are contemplated for site improvements, exterior facades, roofscape and interior public spaces. Progress Drawings representing 50% completion of the Contract Documents may be required for review by the Authority.

Upon approval by the Authority of the CONTRACT DOCUMENTS, the following submissions are required:

IV. CONSTRUCTION INSPECTION

- A. All Contract Addenda, Change Orders, and other modifications and revisions of approved Contract Documents which affect site improvements, exterior facades, roofscape, and interior public spaces.
- B. Shop drawings of architectural components which differ from, or were not fully described in Contract Documents.

Site visits will be conducted to insure construction of the project in accordance the approved Contract Documents.

EXHIBIT G

FIRST SOURCE AGREEMENT

Preliminary Statement

Constitution Office Park Associates Limited Partnership, in its capacity as Tenant of the Boston Redevelopment Authority ("PRA") and redeveloper of Building 149 ("Redeveloper") is engaged in the redevelopment of Building 149 in the Charlestown Navy Yard as an office building. Such rehabilitation of Building 149 is referred to herein as the Project.

As part of its designation by the PPA as Redeveloper, the Redeveloper is required to comply with the PPA's affirmative action requirements including the Mayor's Executive Order relating to permanent employment for City of Boston residents and the Redeveloper has agreed to enter into a "first source" agreement with respect to their hiring for the Project with the City of Boston Neighborhood Development and Employment Agency ("NDEA") and the Boston Job Exchange program (the "Job Exchange") in which NDEA participates. This is the agreement therein described.

NOW, THEREFORE, the Redeveloper and NDEA agree as follows: Redeveloper hereby agrees with NDEA to the following procedures to be followed by Redeveloper in seeking qualified employees to fill job vacancies and new employment positions which occur in

the staff of the Redeveloper for the Project, whether such positions be full-time, part-time or seasonal. For the purpose of this Agreement, the staff of the Redeveloper shall include all operating, security, maintenance and management personnel employed directly by the Redeveloper, and any such personnel permanently assigned to the Project who are employed by any service, maintenance, or management contractor or agent engaged by the Redeveloper.

A. Prior to announcing or advertising the availability of an employment position created by vacancy of an existing position or new employment position with the Redeveloper for the Project in any communications medium or with any employment or referral agency, the Redeveloper will notify the Job Exchange of such position and request the Job Exchange to refer qualified applicants for such position. The Redeveloper shall refrain from such announcement or advertisement for a period of ten business days after notification of the Job Exchange of the availability of such position. Such ten day period is referred to as the "Advance Notice Period."

B. Upon receipt from the Redeveloper of a notice of an employment position, the Job Exchange shall refer to the Redeveloper candidates for employment which the Job Exchange believes are qualified for the position and shall make

arrangements for the persons referred to be interviewed by the Redeveloper within the Advance Notice Period. In the event that the Job Exchange believes that it is unable to refer qualified candidates for such positions within the Advance Notice Period, it shall so inform the Redeveloper, thereby waiving the obligation of the Redeveloper to refrain from further announcement or advertisement to fill such position during the balance of the Advance Notice Period.

C. Nothing contained herein shall prevent the Redeveloper from filling job vacancies or newly created positions without compliance with the foregoing procedures by transfer or promotion from its existing staff or from a file of qualified applicants maintained by the Redeveloper; provided, however, that the Redeveloper shall give preference to those applicants in such file previously referred by the Job Exchange.

D. The Redeveloper shall designate a person to serve as the primary contact with the Job Exchange in carrying out the Redeveloper responsibilities hereunder. The Redeveloper may change the person so designated from time to time.

E. The Redeveloper will pursue Workforce Composition Goals for the project in accordance with the Permanent Employment Program attached hereto as Exhibit A.

Executed this _____ day of _____, 1985.

CONSTITUTION OFFICE PARK ASSOCIATES
LIMITED PARTNERSHIP
by its General Partner,

The Congress Group, Inc.

By: _____

NEIGHBORHOOD DEVELOPMENT EMPLOYMENT
AGENCY

By: _____

The Boston Redevelopment Authority hereby acknowledges that the First Source Agreement fulfills the Redeveloper's responsibilities with respect to Affirmative Action Goals as set forth in the Lease Commencement Agreement by and between the Boston Redevelopment Authority and The Congress Group, Inc. dated July 12, 1984, including but not limited to compliance with the Mayor's Executive Order concerning Affirmative Action Goals for Permanent Employment.

BOSTON REDEVELOPMENT AUTHORITY

By: _____
Stephen Coyle, Director

EXHIBIT A

PERMANENT EMPLOYMENT PROGRAM

Constitution Office Park Associates Limited Partnership, in its capacity as Redeveloper of Building 149 ("Redeveloper") will cooperate with the City of Boston's Neighborhood Development and Employment Agency ("NDEA") and its designated agencies and any other public and community agency engaged in manpower recruitment and training to pursue as goals (hereinafter "Workforce Composition Goals") the furnishing of an adequate proportion of permanent jobs which term includes part-time and seasonal jobs, located at the Project, to persons in the following categories:

- (i) Minorities - 30%
- (ii) City of Boston residents - 50%
- (iii) Women - 50%
- (iv) Low to moderate income persons - 40%
- (v) CETA/JTPA Eligible Persons - 20%

NDEA and BRA each hereby acknowledge that with the exception of operating, security, management and maintenance personnel for Building 149, the Redeveloper does not absolutely control the size of or composition of the workforce employed in the Project. This will be determined by the separate actions of individual tenants. Accordingly, the Redeveloper will pursue Workforce

Composition Goals for the Project by focusing on steps it can take to encourage its tenants to pursue the same goals. The Redeveloper's responsibility hereunder with respect to the pursuit of the Workforce Compositions Goals shall be limited to the following:

A. The Redeveloper shall pursue such Workforce Composition Goals with respect to all persons employed by the Redeveloper in connection with the operation, security, management and maintenance of the Project. For the purposes of applying this subparagraph A., persons employed by any service, maintenance; or management contractor or agent whose personnel are permanently assigned to and work at the Project shall be considered employed by the Redeveloper.

B. Redeveloper shall notify all prospective lessees (hereinafter "Tenants") of Building 14⁰, prior to execution of any lease or occupancy agreement, that it supports the pursuit of the Workforce Composition Goals set forth above and shall encourage Tenants to pursue such goals in their own employment Practices. Such encouragement shall consist of the following activities:

(i) Redeveloper shall include the following language in all leases with it's Tenants:

Tenant is hereby notified that the landlord supports the affirmative action and resident

preference goals, which are attached to this lease as Exhibit "WCG", regarding the employment of City of Boston residents, minorities, females, low to moderate income persons, and economically disadvantaged persons, and encourages Tenant to pursue such goals in Tenant's own employment practices. Landlord actively encourages Tenant to enter into agreement and to make use of employment and training services provided by Neighborhood Development Employment Agency, Boston Private Industry Council or its designated agencies including use of the Boston Job Exchange. In connection with hiring to fill permanent jobs at the premises, Tenant shall not discriminate against any employee or applicant for employment because of race, color, religious creed, national origin, age or sex. Tenant shall comply to the extent applicable with Title VII of the U.S. Civil Rights Act and M.G.L. c. 151B with respect to employment at the premises."

(ii) If requested by NDEA at least six months prior to completion of construction of Building 149 or Building 199, the Redeveloper shall provide either within Building 149 or Building 199, office space of approximately 1,000 square feet to house a recruitment and referral office (the "Employment Office") to facilitate hiring, particularly of persons described in the Workforce Composition Goals, during the initial leasing period, which period will terminate when 90% of the office space in Building 149 has been occupied by Tenants, or the end of 1987, whichever first occurs. The Employment Office shall be staffed as deemed necessary by such manpower or training agency as may be selected from time to time by NDEA/Boston Job Exchange.

(iii) Redeveloper shall make all Tenants aware of the Boston Job Exchange and the employment referral services provided by it, and encourage Tenants' use thereof, by including a description of the Boston Job Exchange, and Employment Office, if established, in all tenant handbooks, printed rules and regulations for Building 149 or similar reference materials with respect to Building 149. Such description shall include information concerning the persons to be contacted at the Boston Job Exchange and the Employment Office and their telephone numbers.

(iv) Redeveloper shall encourage Tenants to report to it no later than the tenth business day following the close of each calendar quarter falling during the first five years of occupancy of Building 149, concerning the composition of Tenants' workforce at the Project. In implementation of such undertaking, Redeveloper shall mail to each Tenant in occupancy at Building 149, on the first day of each calendar quarter, a request for information concerning the percentages of such Tenant's workforce at Building 149 who fall within the workforce composition categories described in the Workforce Composition Goals. Such request for information will provide a self-addressed, stamped envelope for reply to Redeveloper. Tenants will be asked to provide such statistical information in the format of the

attached form entitled "Permanent Job Employment" and the definitions attached thereto. Statistical information received from responding Tenants who report fewer than 300 employees at the Project will be treated as confidential and reported by Redeveloper in a single, composite report. Tenants reporting 300 or more employees at the Project will have their workforce composition statistics individually reported by Redeveloper to NDEA. Notwithstanding such individual reporting,

(a) neither NDEA nor the Boston Job Exchange (or any successor agency to the Boston Job Exchange) will use individual employment statistics in contact with any Tenant of Building 149 in a manner which suggests any obligation on the part of Tenants to meet the Workforce Composition Goals or otherwise suggest that the role of NDEA or the Boston Job Exchange is to enforce or achieve compliance with such Goals. If Redeveloper receives any complaints from Tenants' whose workforce statistics are individually reported that such a "compliance" contact has been made by NDEA or the Boston Job Exchange, Redeveloper shall thereafter cease to report any individual employment statistics and shall report solely the aggregate, composite statistics.

For so long as the Boston Job Exchange shall continue in operation, such quarterly inquiries will also include a

reminder of the availability of the Boston Job Exchange, information on how to contact the Boston Job Exchange when employment opportunities become available, and a statement by Redeveloper encouraging the Tenant to avail itself of that resource.

(v) The Redeveloper shall initiate and initially subsidize a shuttle bus to bring employees from Haymarket Square to the Project at the beginning and end of the business day. It is intended that such shuttle bus become a breakeven operation and that it will require start-up funds until the breakeven point. If the shuttle bus operation cannot breakeven, the Redeveloper reserves the right to abandon its operation after exhaustion of \$26,400 committed to its establishment. If, prior to the initiation of such shuttle bus or at any time that the same is subsidized by the Redeveloper as contemplated herein but prior to the exhaustion of \$26,400, the Massachusetts Bay Transportation Authority ("MBTA") shall institute bus service which provides substantially similar transportation to the Project, the Redeveloper shall make available any balance of such \$26,400 remaining unexpended at the time of the initiation of such MBTA service for addition to the sums described in paragraph (vi) below.

(vi) The Redeveloper will make available the sum of

\$35,000, to be matched by NDEA, for application to affirmative action activities related to permanent employment at the Project. Such activities will be jointly agreed upon by the Redeveloper and NDEA and may include:

- (a) Providing staff for the Employment Office;
- (b) The funding of skill training programs for skills relevant to the employment opportunities available in the project. Selection of skill training programs and locations will be deferred until Tenants for a substantial portion of Building 149 have been identified so that their needs can be considered in the selection of a training program; and

- (c) A program of information dissemination concerning job availability in the project targeted to community-based, non-profit organizations and community colleges serving both the minority population of the City and the Charlestown neighborhood.

Such \$35,000 may be increased as provided in paragraph (v) above. If NDEA shall determine not to implement the Employment Office as contemplated in paragraph (ii) above, such sum shall be further increased by \$6,000 made available by the Redeveloper.

Exhibit "WCG"
Workforce Composition Goals

Landlord encourages tenant to pursue as goals the furnishing of an adequate proportion of permanent jobs located at the premises to persons in the following categories:

City of Boston Residents	50%
Minorities	30%
Females	50%
Low to Moderate Income Persons	40%
CETA/JTPA Eligible Persons	20%

PERMANENT JOB EMPLOYMENT

PROJECT:

EMPLOYER: _____

ADDRESS: _____

CONTACT: _____ PHONE: _____

OCT. - DEC. _____ JAN. - MAR. _____

APR.-JUN. _____ JUL.-SEPT. _____

JOB CATEGORIES	ANTICIPATED OPENINGS	TOTAL JOB HIRES	BOSTON RESIDENTS	FEMALES	MINORITIES TOTAL	LOW-MOD. INCOME	CETA
1. Officials & Managers							
2. Professionals							
3. Technicians							
4. Sales							
5. Office & Clerical							
6. Skilled							
7. Semi-Skilled							
8. Unskilled							
9. Service Worker							
10. Trainee							
TOTAL #							
% OF TOTAL							

**PERMANENT JOBS EMPLOYMENT
REPORT**

Reporting Instructions:

I. Definitions:

1. **"Retained Jobs"**: Jobs that were in existence prior to the start of the project and are depended upon the project for their continued existence.
2. **"New Permanent Jobs"**: Total number of jobs which are expected to be created as a result of the project and to exist for at least two (2) years beyond the project completion.
One permanent job is equal to one person working 40 hours per week or two (2) or more part-time people whose combined working hours per week equal to 40 hours. If the full time standard work week is less than 40 hours (e.g. 37 hours per week) that figure may be substituted for 40 hours in the calculation.
3. **"Anticipated Openings"**: Total number of "new permanent jobs" currently open for employment.
4. **"New Job Hires"**: Total Number of "new permanent jobs" filled as of this report to date.
5. **"Boston Residents"**: Persons who have been hired for a new permanent job and who reside within one of the following Boston neighborhoods; Allston-Brighton, Back Bay, Charlestown, Dorchester, Downtown, East Boston, Fenway, Hyde Park, Jamaica Plain, Mattapan, Mission Hill, Roslindale, Roxbury, So. End, So. Boston or West Roxbury.
6. **"Minorities"**: Blacks, Am. Indian, Cape Verdean, Alaskan Native, Hispanic, Asian and/or Pacific Islander.
 - 1) Blacks individual having origins in any black racial group of African but not Hispanic.
 - 2) Hispanic persons of Mexican, Puerto Rican, Cuban, Central or S. American
 - 3) Other Minorities American Indians, Alaskan Natives, Asian or Pacific Islanders.

7. "Low-Mod Income": Person who, prior to employment had an income not exceeding the applicable income limit for eligibility for assistance. *Where family size is not known use income limit for family of four persons. **Where prior income is not known use current income.

Household Size

1 Persons:	\$17,250
2 Persons:	19,700
3 Persons:	22,200
4 Persons:	24,650
5 Persons:	26,200
6 Persons:	27,700
7 Persons:	29,250
8 Or More:	30,800

8. "CETA Eligible": Individuals who are participants in a program similar to former CETA funded program (JTPA) who were referred by JTPA official, (i.e. Boston Job Exchange) or who met the JTPA eligibility guidelines prior to employment.